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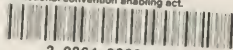


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MONTANA CONSTITUTIONAL CONVENTION

1971-1972

CONSTITUTIONAL CONVENTION ENABLING ACT

CONSTITUTIONAL CONVENTION STUDY NO. 1

PREPARED BY

MONTANA CONSTITUTIONAL CONVENTION COMMISSION

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PREFACE

The delegates to the 1971-1972 Montana Constitutional Convention will need historical, legal and comparative information about the Montana Constitution in addition to information on the organization and operation of constitutional conventions. Recognizing this need, the 1971 Legislative Assembly created the Constitutional Convention Commission and directed it to assemble and prepare essential information for the Convention. To fulfill this responsibility, the Constitutional Convention Commission is preparing a series of research reports.

This first report, an analysis of the Constitutional Convention Enabling Act, was prepared under the supervision of the Commission's Convention Arrangements Committee consisting of William Sternhagen, Chairman; Clyde Hawks; Leonard A. Schulz; and Charles A. Bovey.

This report contains the enabling act for the Constitutional Convention adopted by the 1971 Legislative Assembly, a summary of the act, a calendar of convention dates and a section-by-section analysis of the enabling act.

The Constitutional Convention Enabling Act was originally drafted by the Montana Constitution Revision Commission and introduced into the 1971 Legislative Assembly by Representative James E. Murphy, vice chairman of the commission. The draft as amended was approved by the 1971 Legislature.

It is appropriate in this first Commission report to note the significant contributions of the 1967-1968 Legislative Council Committee on the Montana Constitution and of the 1969-1970 Montana Constitution Revision Commission to the process of constitutional change in Montana. The dedicated work of these individuals led to the calling of the Constitutional Convention by vote of the people in November, 1970.

This report is respectfully submitted to the people of Montana and their delegates to the 1971-1972 Constitutional Convention.

ALEXANDER BLEWETT

CHAIRMAN

The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof. . . .

Montana Constitution
Article XIX, Section 8

TABLE OF CONTENTS

	<u>Page</u>
PREFACE	iii
I. CALLING THE CONVENTION	1
INTRODUCTION	1
CONSTITUTIONAL PROVISION FOR THE CONSTITUTIONAL CONVENTION	1
REFERENDUM 67	2
ENACTING THE CONSTITUTIONAL CONVENTION ENABLING ACT	3
SUMMARY OF CONVENTION ENABLING ACT	4
CONVENTION CALENDAR	10
II. ANALYSIS OF CONSTITUTIONAL CONVENTION ENABLING ACT	12
INTRODUCTION	12
CONVENTION CALL	12
DELEGATE APPORTIONMENT	12
DELEGATE QUALIFICATIONS	13
ELECTION OF DELEGATES	14
OATH OF OFFICE	16
FILLING VACANCIES	16
CONVENTION SESSIONS, LOCATION, LENGTH	17
PRIVILEGE FROM ARREST	20
CONVENTION RULES, JOURNAL AND TRANSCRIPT	21
DUTIES OF PUBLIC OFFICIALS AND EMPLOYEES	22
CONVENTION USE OF GOVERNMENT FACILITIES AND EMPLOYEES	23
SCHEDULE OF LEGISLATION	23
SCHEDULE OF TRANSITION	24

LICENSING OF LOBBYISTS . . . . .	.24
COMPENSATION OF CONVENTION DELEGATES . . . . .	.25
RATIFICATION ELECTION . . . . .	.26
QUALIFIED ELECTORS . . . . .	.29
ELECTION LAWS . . . . .	.30
PREPARATORY COMMISSION . . . . .	.30
CONVENTION APPROPRIATION . . . . .	.33
SEVERABILITY CLAUSE . . . . .	.36
IMMEDIATE EFFECTIVE DATE . . . . .	.36
AUTOMATIC REPEALER . . . . .	.36

NOTES

CHAPTER I . . . . .	.37
CHAPTER II . . . . .	.40

APPENDICES

A. FORTY-SECOND LEGISLATIVE ASSEMBLY V. LENNON . . . . .	.42
B. ATTORNEY GENERAL'S OPINION ON QUALIFICATIONS OF DELEGATES . . . . .	.53
C. FILING OF DECLARATION OF NOMINATION BY PARTY CANDIDATES . . . . .	.61
D. ELECTION GUIDE FOR PARTY CANDIDATES FOR DELEGATE TO CONSTITUTIONAL CONVENTION . . . . .	.63
E. FILING OF CERTIFICATES OF NOMINATION BY INDEPENDENTS . . . . .	.65
F. ELECTION GUIDE FOR INDEPENDENT CANDIDATES FOR DELEGATE TO CONSTITUTIONAL CONVENTION . . . . .	.66
G. CERTIFICATE OF NOMINATION FOR INDEPENDENT CANDIDATES . . . . .	.68
H. SIGNATURES NECESSARY FOR CERTIFICATES OF NOMINATION OF INDEPENDENT CANDIDATES FOR DELEGATE TO CONSTITUTIONAL CONVENTION . . . . .	.69
I. LICENSING OF LEGISLATIVE LOBBYISTS . . . . .	.71
J. PER DIEM AND EXPENSES OF LEGISLATORS . . . . .	.75

Chapter I

CALLING THE CONVENTION

INTRODUCTION

The Constitution of the State of Montana was written by the Montana Constitutional Convention of 1889, which met under terms of a congressional enabling act inviting Montana, Washington, South Dakota and North Dakota to frame state constitutions as the initial step toward full admission to the Union.¹ Twice in the territorial period which began in 1864, Montanans had acted on their own initiative to call conventions and draft constitutions -- first in a hurried and premature manner in 1866, then carefully in 1884 in a full-scale convention called by the territorial legislature.² Montana's 1889 Convention based its work on the Constitution of 1884. Voters ratified the Constitution October 1, 1889, and President Benjamin Harrison proclaimed Montana the forty-first state on November 8, 1889.³

Since then, Montana's Constitution has been amended 37 times, but few basic changes have been made in the structure laid down in 1889 for state and local government.⁴

A decade of interest in comprehensive constitution revision culminated November 3, 1970, when Montana voters approved Referendum 67 calling for a convention to "revise, alter or amend the Montana Constitution."

CONSTITUTIONAL PROVISION FOR THE CONSTITUTIONAL CONVENTION

Article XIX, section 8 of the Montana Constitution provides for the calling of constitutional conventions:

The legislative assembly may at any time, by a vote of two-thirds of the members elected to each house, submit to the electors of the state the question whether there shall be a convention to revise, alter, or amend this constitution; and if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof.

CALLING THE CONVENTION

The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts. The legislative assembly shall in the act calling the convention designate the day, hour and place of its meeting, fix the pay of its members and officers, and provide for the payment of the same, together with the necessary expenses of the convention. Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention. The qualifications of members shall be the same as of the members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly. Said convention shall meet within three months after such election and prepare such revisions, alterations or amendments to the constitution as may be deemed necessary, which shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two nor more than six months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect.

REFERENDUM 67

The 1969 Legislative Assembly, by a two-thirds vote in each house, submitted to the Montana voters the question: "... whether the legislative assembly at the 1971 session, and in accordance with Article XIX, section 8 of the Montana Constitution, shall call a convention to revise, alter, or amend the constitution of Montana."⁵ At the general election November 3, 1970, a total of 133,482 electors voted for calling the convention, and 71,643 electors voted against the referendum.

CALLING THE CONVENTION

The general election vote to call a constitutional convention marked a decisive stage in a movement for constitutional revision that had been accelerated during the 1960s chiefly by legislative action. Developments included a study by the Legislative Council in 1967-68 of the adequacy of the Montana Constitution and dual action by the 1969 Legislative Assembly in establishing the Montana Constitution Revision Commission and placing Referendum 67 on the 1970 ballot. Findings of the Legislative Council's section-by-section study of the Montana Constitution were summarized in a report to the 1969 Legislative Assembly. The Council concluded there was need for substantial revision and improvement in the Constitution. Classifying fewer than one-half of the document's 262 sections as adequate for present needs, the Council stated:

There is need for substantial revision and improvement in the Montana Constitution. Provisions which invite subterfuge, provisions which are ambiguous, provisions which are statutory, and provisions which place serious limitations on effective state government were found throughout the Montana Constitution.⁶

The Council recommended that the legislature establish a Constitution Revision Commission to conduct a detailed study of the method of constitutional change and disseminate information on the Montana Constitution to the public. A 16-member commission was established by the 1969 Legislature and after preliminary subcommittee reports and study, the commission unanimously endorsed a convention as the best route to constitutional change for Montana.⁷

State organizations spanning business, labor, farm and professional interests also endorsed Referendum 67 as a means to achieve better state and local government. The nucleus of the broad-based bipartisan support for calling the Constitutional Convention was the Montana Constitutional Convention Committee organized in June, 1970.⁸ During the months preceding the 1970 vote on calling a convention, the Constitution Revision Commission, the Constitutional Convention Committee and the numerous groups that had endorsed the convention conducted a public information program on the need for constitutional revision.

ENACTING THE CONSTITUTIONAL CONVENTION ENABLING ACT

Article XIX, Section 8 of the Constitution provides in part:
"...if a majority of those voting on the question shall

CALLING THE CONVENTION

declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof." In accordance with that provision, as interpreted by the Montana Supreme Court in Forty-Second Legislative Assembly v. Lennon,⁹ the 1971 Legislative Assembly enacted and Governor Forrest H. Anderson signed the Constitutional Convention Enabling Act.¹⁰ The act is set forth in chapter

The act provides that delegates to the Convention will be elected in the same manner as members of the House of Representatives. This permits both independent and party candidates to run as Convention delegates. The number of members of the Convention and the districts from which they will be elected are the same as the new apportionment (based on the 1970 census) for the 1972 election of members of the House of Representatives.

The act provides for a party primary September 14, 1971, and a special general election November 2, 1971. The deadline to file for delegate with the Secretary of State is August 4, 1971 for independents and August 5, 1971 for party candidates. A three-day organizational session of the Convention will begin November 29, 1971; the main (plenary) session will convene on January 17, 1972. The Convention may remain in session as long as necessary and may recess from time to time. The Convention appropriation will probably limit the Convention to approximately 60 to 80 working days. The ratification election, to be set by the Convention, probably will be conducted in conjunction with the general election on November 7, 1972.

SUMMARY OF CONVENTION ENABLING ACT

1. The Convention will meet in the House of Representatives chamber in the State Capitol in Helena.
2. The number of members of the Convention and the districts from which they are elected will be the same as for the election of the members of the next House of Representatives. The new apportionment provides for 100 representatives from 23 districts.

TABLE 1

CONSTITUTIONAL CONVENTION DELEGATE DISTRICTS
 (Based on Reapportioned House of
 Representatives Districts)

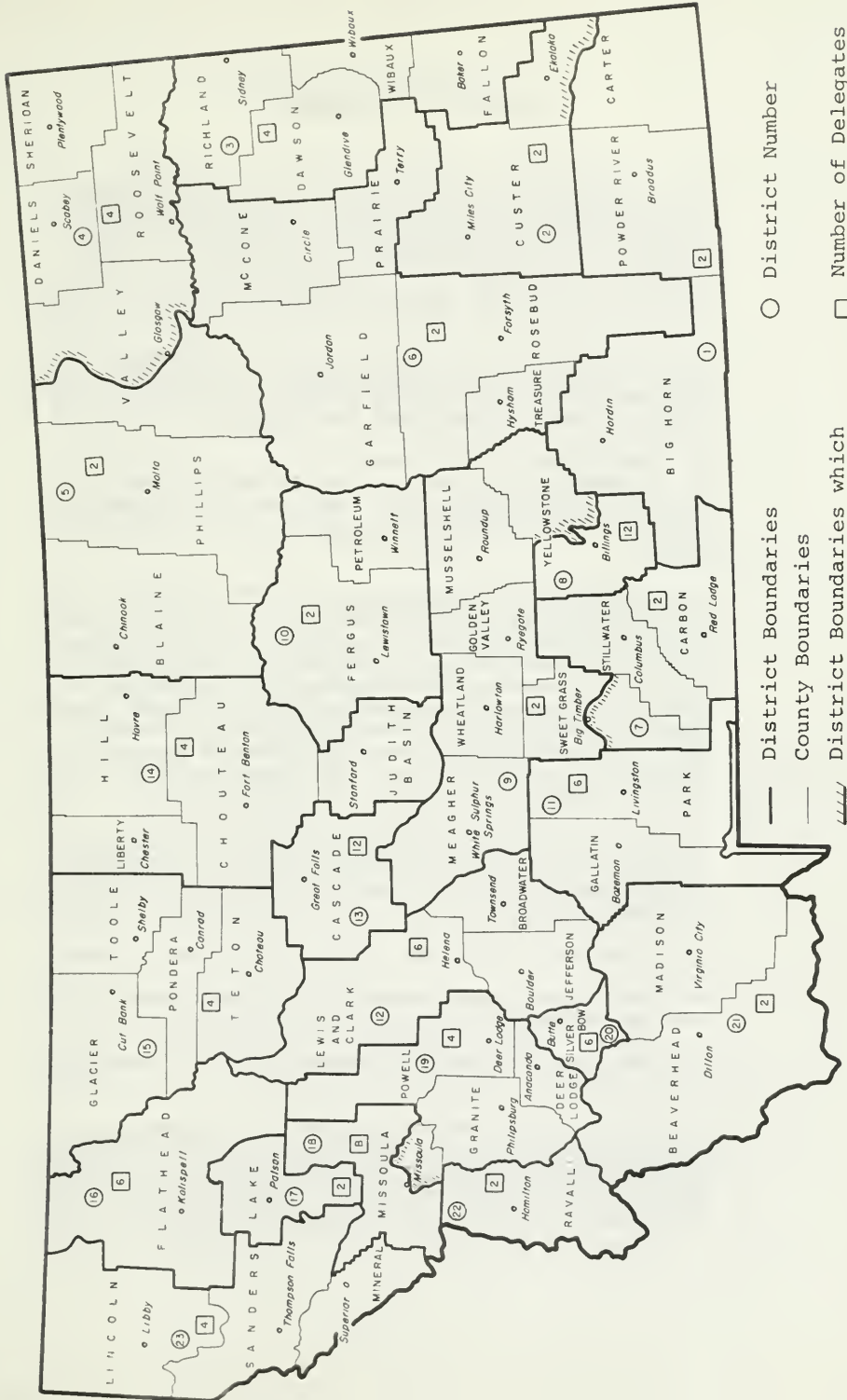
<u>District No.</u>	<u>County</u>	<u>No. of Delegates</u>
1	Big Horn; Powder River; Carter less Ekalaka census enumerator division	2
2	Custer; Ekalaka census enumerator division of Carter	2
3	Richland; Dawson; Wibaux; Fallon	4
4	Sheridan; Roosevelt; Daniels; Valley less Fort Peck and Hinsdale census enumerator divisions	4
5	Blaine; Phillips; Fort Peck and Hinsdale census enumerator divisions of Valley	2
6	Garfield; Rosebud; McCone; Prairie; Treasure	2
7	Stillwater; Carbon; south of the Yellowstone census enumerator division of Sweet Grass	2
8	Yellowstone less Buffalo Creek census enumerator division, Shepherd enumerator division and Huntley Project census enumerator division	12
9	Meagher; Wheatland; Golden Valley; Musselshell; north of Yellowstone census enumerator division of Sweet Grass; Buffalo Creek census enumerator division, Huntley Project enumerator division and Shepherd census enumerator division of Yellowstone	2

CALLING THE CONVENTION

TABLE 1 Continued

<u>District No.</u>	<u>County</u>	<u>No. of Delegates</u>
10	Fergus; Petroleum	2
11	Gallatin; Park	6
12	Broadwater; Jefferson; Lewis & Clark	6
13	Cascade	12
14	Hill; Chouteau; Judith Basin; Liberty	4
15	Glacier; Toole; Pondera; Teton	4
16	Flathead	6
17	Lake	2
18	Missoula less Bonner- Clinton census enumera- tor division of Missoula	8
19	Powell; Deer Lodge; Granite; Bonner-Clinton census enumerator division of Missoula	4
20	Silver Bow	6
21	Madison; Beaverhead	2
22	Ravalli	2
23	Mineral; Sanders; Lincoln	4
Total Constitutional Convention Delegates		100

CONSTITUTIONAL CONVENTION DELEGATE DISTRICTS



CALLING THE CONVENTION

3. State and local officers who are prohibited by the Constitution or laws of Montana from holding more than one office may not serve as delegates to the Constitutional Convention. A delegate to the Convention is considered to be a "state officer" holding a public office of a civil nature.
4. According to the Constitution, a delegate must be 24 years old, a United States citizen and a resident of the district from which he is elected for at least 12 months preceding the election.
5. Delegates to the Constitutional Convention will be elected in the same manner as members of the House of Representatives. Therefore, candidates may file and run as independents or as party candidates.
6. Independent candidates must file a certificate of nomination with the Secretary of State, according to Section 23-3318, Revised Codes of Montana, 1947. This certificate must be filed by August 4, 1971. It must contain signatures of electors equal to 5 percent or more of the total vote cast for the representative who received the lowest vote but was still elected at the 1970 general election in the district. See Appendix H for number of signatures required in each district.
7. Party candidates must file a declaration of nomination with the Secretary of State by August 5, 1971, according to Section 23-3304, Revised Codes of Montana, 1947.
8. Candidates must pay a fee of \$15 when filing.
9. The primary for nomination of party candidates will be September 14, 1971.
10. The special general election for all Convention delegates will be November 2, 1971.
11. The Convention will assemble for a three-day organizational meeting November 29, 1971, to elect permanent Convention officers, adopt rules of procedure and provide for interim committees and staff to prepare for the main Convention meeting.

CALLING THE CONVENTION

12. The main Convention meeting will begin January 17, 1972. The Convention may recess from time to time and may remain in session as long as necessary. The appropriation, in effect, limits the Convention to 60 to 80 working days.

13. Lobbyists are required to register and report expenditures.

14. Members and officers of the Convention will be paid the same per diem (\$20 a day) and expenses (\$25 a day) as provided by law for members and officers of the Legislative Assembly.

15. Members and officers will be entitled to mileage for three trips to and from their residence and Helena at the rate provided for the Legislative Assembly (9¢ a mile).

16. The revisions, alterations or amendments to the Constitution adopted by the Convention will be submitted to Montana voters for ratification or rejection at an election set by the Convention. The election can be no less than two months nor more than six months after the adjournment of the Convention. The Convention probably will provide for a special ratification election November 7, 1972, general election day.

17. The Convention may submit proposals to the electorate for ratification in any of the following forms: (1) as a unit in the form of a new Constitution, (2) as a unit with the exception of separate proposals to be voted upon individually, or (3) in the form of a series of separate amendments.

18. Each proposed revision, alteration or amendment, accompanied by an explanation, must be published in full and disseminated to the voters at least 30 days before the ratification election.

19. A temporary citizens commission known as the Montana Constitutional Convention Commission was created to prepare for the Constitutional Convention. The Governor, Supreme Court, House of Representatives and Senate each appointed four members, no more than two of whom could belong to

CALLING THE CONVENTION

the same political party. Legislators could not be appointed. The Commission is to compile, without recommendation, essential information for the delegates. When the delegates assemble, they will need full, detailed and comprehensive analyses of the constitutional problems confronting Montana. The rank-and-file delegate can not be expected to be an authority on all matters relating to the constitutional structure of the State. He needs materials to which he can turn immediately and continually. This reference material will be prepared by the Commission staff.

CONVENTION CALENDAR

The calendar for the Convention and related events is as follows:

Between March and November, 1971	Preparation and publication by the Constitutional Convention Commission of reports for the Constitutional Convention.
August 4, 1971; 5:00 p.m.	Deadline for filing independent certificates of nomination with the Secretary of State.
August 5, 1971; 5:00 p.m.	Deadline for filing partisan nominating declarations with the Secretary of State
September 14, 1971	Republican and Democratic Party Primaries to nominate party candidates.
September 24, 1971	Clubs must file financial statements with Secretary of State.
September 29, 1971	Candidates must file financial statements with Secretary of State.
November 2, 1971	Special election to choose convention delegates.

CALLING THE CONVENTION

November 12, 1971	Clubs must file financial statements with Secretary of State.
November 17, 1971	Candidates must file financial statements with Secretary of State.
November 27 to November 29, 1971	Orientation session for delegates.
November 29 to December 1, 1971	Organizational meeting of Convention.
December, 1971	Study by delegates and appointment of committees by president of Convention.
January 17, 1971	Opening of plenary session of the Convention. The Convention may recess and remain in session as long as necessary. The Convention appropriation probably will limit the Convention to approximately 60 to 80 working days.
<u>Sine die adjournment</u>	If the Convention chooses to hold the ratification election in conjunction with the November 7, 1972 general election, it must adjourn <u>sine die</u> not earlier than May 7, 1972 nor later than September 7, 1972.
November 7, 1972	General election day could be used by the Convention for the election to adopt or reject the proposals of the Convention.
Effective date	The Convention will fix the date or dates upon which voter-approved revisions, alterations or amendments take effect. Of necessity there will be situations where time will be needed to work out transitional details. Therefore, some recommended changes may not become effective until several years after they are approved.

CHAPTER II

ANALYSIS OF CONSTITUTIONAL CONVENTION ENABLING ACT

INTRODUCTION

The following is a section-by-section analysis of the Constitutional Convention Enabling Act, 1971 Laws of Montana, Ch. 296, as amended by 1971 Laws of Montana, Extraordinary Session, Ch. 1. Provisions of the act are reproduced in italics and are followed by explanations.

CONVENTION CALL

Section 1. A constitutional convention to propose revisions, alterations, or amendments to the constitution of the state of Montana is hereby called.

This section calls a constitutional convention in accordance with the mandate expressed by the vote of the people under Article XIX, Section 8, of the Montana Constitution. Like the Constitution, Section 1 of the enabling act provides that the Convention may prepare and propose "...revisions, alterations, or amendments..." to the Constitution. The Convention has only the power to propose; all revisions, alterations or amendments must be approved by Montana voters before they take effect.

DELEGATE APPORTIONMENT

Section 2. The number of members of the convention and the districts from which they are elected shall be the same as that provided for the election of members of the house of representatives of the Montana legislative assembly at the general election to be held November 7, 1972.

Article XIX, Section 8 provides in part: "The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts." The Montana Supreme Court, in Forty-Second Legislative Assembly v. Lennon, decided "...the constitutional convention must be apportioned on the basis of the 1970 census applicable to the apportionment of the house of representatives to be elected November 7, 1972."¹ The 1971 Legislative Assembly apportioned the House of Representatives districts according to the 1970 census during the second special session, after an earlier apportionment plan approved by the Legislative

ANALYSIS OF ENABLING ACT

Assembly had been declared unconstitutional by the federal district court.² The apportionment plan provides for 100 representatives from 23 districts. For a table of delegate apportionment and a map of districts, see pages, 5, 6 and 7.

DELEGATE QUALIFICATIONS

Section 3. The qualifications of members shall be the same as that of members of the senate of the Montana legislative assembly as provided in article V, section 3 of the constitution of the state of Montana: "No person shall be a senator who shall not have attained the age of twenty-four (24) years, and who shall not be a citizen of the United States and who shall not (for at least twelve (12) months next preceding his election) have resided within the county or district in which he shall be elected."

Article XIX, Section 8 provides in part that "The qualifications of members [of the convention] shall be the same as of the members of the senate..." Article V, Section 3 provides for the qualifications of members of the Senate: A delegate must be 24 years old, a United States citizen, and a resident of the district for at least 12 months preceding the election. The Montana Supreme Court in *Forty-Second Legislative Assembly v. Lennon*, decided: "Any state and local officers who are prohibited by the constitution or laws of Montana from holding more than one office may not serve as delegates to the constitutional convention. A delegate to the constitutional convention is a 'state officer' holding a public office of a civil nature."³ Attorney General's Opinion No. 4, Volume No. 34, prepared for the Secretary of State, ruled on the eligibility of various public officials to be candidates for delegate to the Constitutional Convention:

Members of the legislature are prohibited by the constitution from holding other public office "during the term for which they are elected" and therefore precluded from serving as delegates to the constitutional convention.

The governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction are prohibited by the constitution from holding other public office "during their term of office" and, therefore, are precluded from serving as delegates to the constitutional convention.

Justices of the supreme court and district court judges are prohibited by the constitution from holding other

ANALYSIS OF ENABLING ACT

public office "while they remain in the office to which they have been elected or appointed" and, therefore, may serve as delegates to the constitutional convention if they resign their present office before assuming the office of delegate. It is not necessary, however, for such officers to resign their present office to qualify as a candidate for the office of delegate.

All public officers who are prohibited by the constitution or statutes from holding other public office, either (2) "during the term for which they are elected" or (b) "during their term of office" are precluded from serving as delegates to the constitutional convention.

All other public officers, not burdened with legal infirmities similar to those heretofore described, may serve as delegates to the constitutional convention but must resign their present office before assuming the office of delegate. It is not necessary, however, for such officers to resign their present office to qualify as a candidate for the office of delegate.

Members of the constitutional convention commission may not serve as delegates to the constitutional convention. (See Appendix B, page 53).

ELECTION OF DELEGATES

Section 4. (1) Delegates to the constitutional convention shall be elected in the same manner as members of the house of representatives, except the special primary election shall be held September 14, 1971 and the special general election shall be held November 2, 1971.

(2) Thirty (30) days or more before the special general election, the secretary of state shall certify to the registrars the name and description of each person nominated, as specified on the certificate of nomination filed with him.

Article XIX, Section 8 provides in part: "The number of members of the convention shall be the same as that of the house of representatives, and they shall be elected in the same manner, at the same places, and in the same districts." Section 4 of the law, in accordance with the constitutional provision, provides that delegates to the Constitutional Convention will be elected

ANALYSIS OF ENABLING ACT

in the same manner as members of the House of Representatives. Therefore, candidates may run either as independents or as party candidates.

The party primary for nomination of party candidates will be September 14, 1971. The special general election for delegates will be November 2, 1971.

Independent candidates must file a certificate of nomination and \$15.00 filing fee with the Secretary of State, according to Section 23-3318, R.C.M. 1947 (this section is set forth in Appendix D). These certificates must contain signatures of electors equal to 5 percent or more of the total vote cast for representative (the candidate receiving the least votes who was elected) at the 1970 general election in the district. See Appendix H for the number of signatures required in each district. The names of independent candidates nominated for public office by a certificate of nomination are rotated on the general election ballot below the rotation of the names of candidates of the two major parties.

Certificates of nomination, certified by the County Clerk and Recorder, accompanied by the \$15.00 filing fee, must be received in the office of the Secretary of State by 5:00 p.m., August 4, 1971. No certificates of nomination received after 5:00 p.m., August 4, 1971, will be accepted for filing even if they bear a postmark dated before the deadline. No certificates of nomination will be accepted if not certified by the County Clerk and Recorder. In multi-county districts, separate petitions should be used for each county to facilitate the certification of the certificate by the respective clerks and recorders.

Party candidates must file declarations of nomination and the \$15.00 filing fee with the Secretary of State by 5:00 p.m., August 5, 1971, according to Section 23-3304, R.C.M. 1947 (this section is set forth in Appendix C). Declarations of nomination received after the 5:00 p.m. deadline will not be acceptable for filing, even if they bear a postmark dated before the deadline. Party candidates will be nominated by voters in primaries on September 14, 1971, and names of candidates nominated at the party primaries are to be printed on the general election ballot ahead of the names of independent candidates.

For the 1866 Montana Convention, delegates were elected on a partisan basis; in 1884 the Convention election was nonpartisan. In 1889 the election was partisan, but provided for minority representation. Three delegates were elected from each district, but electors voted for only two candidates in each district, guaranteeing minority representation.

ANALYSIS OF ENABLING ACT

OATH OF OFFICE

Section 5. Each member, before entering upon his duties, shall take and subscribe the following oath or affirmation prescribed by Section 1 of article XIX of the constitution of the state of Montana: "I do solemnly swear (or affirm) that I will support, protect and defend the constitution of the United States, and the constitution of the state of Montana, and that I will discharge the duties of my office with fidelity; and that I have not paid, or contributed, or promised to pay or contribute, either directly or indirectly, any money or other valuable thing to procure my nomination or election (or appointment) except for necessary and proper expenses expressly authorized by law; that I have not knowingly violated any election law of this state, or procured it to be done by others in my behalf; that I will not knowingly receive, directly or indirectly, any money or other valuable thing for the performance or non-performance of any act or duty pertaining to my office other than the compensation allowed by law, so help me God."

Article XIX, Section 8 provides in part: "Before proceeding, the members shall take an oath to support the constitution of the United States and of the state of Montana, and to faithfully discharge their duties as members of the convention." Section 5 of the enabling act provides that members shall take and subscribe to the oath for public officers provided in Article XIX, Section 1 of the Constitution.

FILLING VACANCIES

Section 6. Vacancies occurring in the convention shall be filled in the manner provided for filling vacancies in the legislative assembly as provided in sections 43-215 and 43-216, R.C.M. 1947:

"43-215. Filling vacancies in legislative assembly--appointment by board of county commissioners--calling of board meeting. When a vacancy occurs in either house of the legislative assembly, the vacancy shall be filled by appointment by the board of county commissioners, or, in the event of a multicounty district, the boards of county commissioners comprising the district sitting as one appointing board. The chairman of the board of county commissioners of the county in which the person resided whose vacancy is to be filled shall call a meeting for the purpose of appointing the member of the legislative assembly, and he shall act as the presiding officer of the meeting."

"43-216. Alternative method of selection--failure of one candidate to receive majority vote. In the event that a decision cannot be made by the appointing board because of failure of any candidate to

ANALYSIS OF ENABLING ACT

receive a majority of the votes, the final decision may be made by lot from a number of candidates, not exceeding the number of counties comprising the district, in accordance with rules of selection adopted by the appointing board."

Article XIX, Section 8 provides in part: "...vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly." This section incorporates the provisions from the Revised Codes of Montana, 1947, which apply to filling vacancies in the Legislative Assembly.

CONVENTION SESSIONS, LOCATION, LENGTH

Section 7. (1) It shall be the duty of the delegates elected to assemble in the chambers of the house of representatives in the state capitol building in the city of Helena at 10:00 a.m. on November 29, 1977, for an organizational meeting of no longer than three (3) days duration.

(2) This meeting shall be for the purpose of electing permanent convention officers, adopting rules of procedure, and providing for such interim committees and staff members as may be necessary to prepare for the plenary meeting of the convention.

(3) Until the convention has adopted rules of procedure, "Mason's Manual of Legislative Procedure" shall govern the procedure of the convention. A majority of the whole number of delegates to the convention shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day. The convention may compel the attendance of its members.

(4) The governor shall call the first meeting of the constitutional convention to order and shall preside until a temporary president is elected. The governor shall:

(a) call the roll of the members-elect, (as shown by the official election returns on file in the office of the secretary of state);

(b) cause the oath called for by this act to be administered to those members-elect who are present;

(c) call for nominations of convention members for the office of temporary president;

(d) cause the roll of members to be called for the purpose of voting for temporary president, and

(e) declare to be elected the person receiving a plurality of the votes cast for the office of temporary president.

(5) The temporary president shall then assume the duties of the presiding officer, and the convention shall proceed to the election of a president from within its membership in like

ANALYSIS OF ENABLING ACT

manner as the temporary president was elected except that a majority of the votes cast is required to elect the president of the convention. The convention shall then proceed to elect one of its members as vice-president of the convention to preside in the absence of the president.

(c) It shall be the duty of the delegates elected to assemble in plenary session in the chambers of the house of representatives in the state capitol building in the city of Helena at 10:00 a.m. on January 17, 1972. The convention, which may recess from time to time, shall then remain in session as long as necessary.

The Constitution in Article XIX, Section 8 requires that a convention meet within three months after the election of delegates and that the ratification election occur not less than two nor more than six months after the adjournment of the convention. The Legislative Assembly is to designate the day, hour and place of the convention's meeting. Section 7 of the enabling act provides a three-day organizational session of the Convention from November 29 to December 1, 1971, to precede the main or "plenary" session of the Convention that is to begin January 17, 1972. The organizational session is provided to organize the Convention, elect permanent Convention officers, adopt rules of procedure and provide for interim committees and staff members to prepare for the plenary meeting of the Convention. The section provides that the Governor will call the first meeting of the Convention to order and preside until a temporary president is elected. The organizational session will be preceded by a one- or two-day orientation session November 27 and 28 that will include seminars and distribution of material prepared by the Constitutional Convention Commission. The orientation and organizational meetings should permit the Convention to proceed without delay when it assembles in plenary session in January. The month and a half between the organization session and the plenary session will give delegates time to study material provided them and will permit the president of the Convention to appoint committees. Organizational sessions have been used successfully in Illinois, Arkansas, North Dakota and Maryland.

The main meeting of the Convention will begin January 17, 1972. The Convention may recess from time to time and may remain in session as long as necessary. However, the appropriation again probably will limit the Convention to 60 to 80 working days.

It is expected that the Convention will establish a timetable for completion of its deliberations. Time must be allowed for hearings, additional research, committee deliberations and sufficient plenary sessions. Excluding the abnormally long

ANALYSIS OF ENABLING ACT

Rhode Island and New Hampshire conventions, the average length of 27 state constitutional conventions during the 31-year period from 1938 to 1969 was 2.6 months. Montana's first convention in 1866 met six days. The second convention in 1884 remained in session 23 days and the third convention in 1889 lasted 42 days.

The 1946 New Jersey convention (90 days), the 1955 Alaska convention (75 days), the 1969 New Mexico convention (60 days), the 1967-68 Maryland convention (120 days) and the 1969 Arkansas convention (120 days) completed work within strict timetables set by their enabling acts. The North Dakota convention to meet next January is limited to 30 days.

Some commentators believe that the time limits imposed on the New Jersey and Alaska conventions account significantly for the effectiveness of those conventions because the limitations "...appeared to have the salutary effect of giving everybody a sense of urgency...[and] there was evident a strong feeling of obligation to avoid filibuster or diversionary tactics that might endanger success."⁴

Careful preparatory work should reduce the time required for the Convention. When the Convention assembles, it will receive the materials which have been prepared by the 1967-68 Legislative Council study of the Constitution, the work of the Constitution Revision Commission during 1969-70 and the studies to be prepared by the Constitutional Convention Commission created in Section 20 of the enabling act. Therefore, the Convention will not be meeting without the benefit of careful, comprehensive and official preparation as was the case in Missouri's 1944 Convention and, to some extent, in the 1961 Michigan Convention. The Illinois, Maryland, Alaska, Hawaii, Pennsylvania, Connecticut, New Jersey, New York and Arkansas conventions all were assisted by preparatory commissions.

The Convention will assemble in the House of Representatives chamber in the State Capitol in Helena. For the duration of the Convention, it is suggested that the chamber be designated "Convention Hall." The three previous Montana constitutional conventions (1866, 1884, 1889) met in Helena.⁵ There is no doubt that a state capital has advantages as the site of a constitutional convention. These are summed up by Professor Wheeler, as follows:

...the state capitol also has its advantages. It is the focal point of government activity and of public awareness. It contains the symbols of government upon which the attention of the people is focused. Physically, the legislative chambers offer a readymade site for

ANALYSIS OF ENABLING ACT

site for deliberation. Committee rooms are usually available. Often the committees can draw upon the staff and clerical personnel of state agencies for assistance. Newspapers, radio and television have their staffs there. Possibly the chief advantage is the usual availability of study materials in the state or the supreme court library as well as the proximity of state officials for information and testimony.⁶

It is clear that the city of Helena has the facilities and possesses the significant advantages referred to by Professor Wheeler. Not only are there accommodations for the delegates and visitors, but newspaper, radio and television facilities will be adequate. In addition, the State Law Library is located in the Capitol. Finally, Helena is centrally located.

Convention sessions will be in the House of Representatives chamber in the Capitol because it is large enough and has the necessary voting machinery and other facilities. The 1971 Legislative Assembly made the facilities, furniture, fixtures, supplies and other property of the Montana Legislative Assembly available for the Convention.⁷ The Convention will not conflict with any regular legislative session, and any special session could be called so that it would not coincide with the Convention.

The Convention will adopt its own rules of procedure; until it does, Mason's Manual of Legislative Procedure, used by the Montana Legislative Assembly in recent sessions, will be used.

PRIVILEGE FROM ARREST

Section 8. In going to and returning from the convention and during its sessions, the members shall in all cases, except treason, felony or breach of the peace, be privileged from arrest; and they shall not be questioned in any other place for any speech or debate in the convention.

This section provides for a delegate's immunity from arrest--the usual practice for constitutional conventions and legislative bodies. It is similar to the corresponding provision in Article V, Section 15 of the Montana Constitution with respect to the Montana Legislative Assembly.

ANALYSIS OF ENABLING ACT

EMPLOYEES OF CONVENTION

Section 9. The convention may select and employ such employees as it may deem necessary to the efficient conduct of its business, each of whom shall receive such compensation as may be fixed by the convention. The convention may make such other expenditures as it deems proper to carry out its work, but shall not authorize total expenditures in excess of the amount appropriated by law for its expenses.

In order for the Convention to perform its work effectively, it must have an adequate and experienced staff. The Convention is the hiring authority, but staff selection cannot be a last-minute undertaking. The Constitutional Convention Commission will study staff needs and prepare a list of positions and prospective employees for consideration by the Convention. The commission staff will be made available to the Convention when it meets.

Sections 12 (2) and 20 (6) provide that the commission and Convention may borrow state and local officers and employees with the consent of the employing agency. That enables the Convention to use state and local employees with special training or experience.

Article XIX, Section 8 states in part that the Legislative Assembly shall provide for: "...the necessary expenses of the convention." Section 9 of the enabling act limits expenditures of the Convention to the amount appropriated by the Legislative Assembly.

CONVENTION RULES, JOURNAL AND TRANSCRIPT

Section 10. (1) The convention shall determine the rules of its procedure, and be the judge of the election, returns and qualifications of its members. The convention shall keep a verbatim journal of its proceedings and a transcript of its debates. Each committee of the convention shall keep a record of its proceedings and reports. The convention may also provide for the publication of any of its other documents and reports.

(2) The verbatim journal of its proceedings, the transcript of the debates of the convention, and the committee reports and proceedings shall be filed in the office of the secretary of state.

ANALYSIS OF ENABLING ACT

This section provides that the Convention shall adopt rules of procedure. The Constitutional Convention Commission will prepare a comparison of rules used by other constitutional conventions and a set of proposed rules for consideration by the Convention.⁸ Section 7 (3) provides that until the Convention has adopted rules of procedure, Mason's Manual of Legislative Procedure will be used.

Ordinarily, convention procedural rules are brief, defining such matters as the necessary majority and quorum, the officers and powers of the convention and standing committees, the floor procedures in debate and the introduction of motions and drafts and often the duties of convention employees such as secretaries, clerks and reporters. The commission will review the rules of recent constitutional conventions in other states, the rules of the 1866, 1884 and 1889 Montana conventions and the rules of the Montana Legislative Assembly in preparing proposed rules.

Section 10 of the enabling act also requires the Convention to keep a journal and transcript of the Convention debates. Both the 1884 and 1889 conventions debated the importance of recording their deliberations, and both conventions decided that their work would be eased and the future served by maintaining careful accounts of convention debates and decisions. The Montana Legislature provided for the publication in 1921 of the debates and proceedings of the 1889 Convention, but the records of the 1884 Convention were never printed and are available only in the files of the Secretary of State and on microfilm at the State Historical Society Library.⁹ Records of Convention activities will be invaluable sources of information to future interpreters of the Constitution, to students of government and to historians. Conventions always will face pressure to keep expenses down, and one way to do so is to limit the number of records kept. But this is a poor form of economy. The importance of a journal and transcript of debates cannot be overestimated.

DUTIES OF PUBLIC OFFICIALS AND EMPLOYEES

Section 11. (1) It shall be the duty of all public officers and employees to furnish the convention with any and all statements, papers, books, records and public documents that the convention requires on request of the convention or its committees, and appear before the convention or any committee thereof. The convention, and its committees, may compel the attendance and testimony of witnesses and the production of books, records and documents. Oaths may be administered by the president or any other officer of the convention. Subpoenas

ANALYSIS OF ENABLING ACT

and subpoenas duces tecum may be issued over the signature of the president or any other officer of the convention, and may be served by any adult person designated by the issuing officer.

(2) Any district court judge, upon application of the convention, may compel the attendance of witnesses, the production of books, records or documents, and the giving of testimony before the convention by an attachment for contempt or otherwise in the same manner as production of evidence, not privileged by law, may be compelled before the court.

This section imposes a legal duty on all public officers and employees to appear before the Convention or its committees and to furnish the Convention with public records. The Convention is empowered to compel the attendance and testimony of witnesses.

CONVENTION USE OF GOVERNMENT FACILITIES AND EMPLOYEES

Section 12. (1) The convention may use the facilities of the state, municipal or county government when such use is not disruptive of regular governmental activities.

(2) State, municipal and county officers and employees, at the request of the convention and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the constitutional convention. If leave with pay is granted they shall receive no other compensation, except mileage and per diem, from the convention.

This section permits the Convention to borrow the facilities of the state, municipalities or counties when such use is not disruptive of regular governmental activity. The provision permits public hearings at locations away from the Capitol. For example, hearings could be held around the state to carry the Convention to the local communities and provide additional sources of information and public opinion.

SCHEDULE OF LEGISLATION

Section 13. The convention may also prepare a schedule of proposed legislation for submission to the 1973 legislative assembly that will complement the proposed revisions, alterations or amendments.

ANALYSIS OF ENABLING ACT

It is contemplated that the Convention will submit to the 1973 Legislative Assembly a "schedule of proposed legislation" needed to complement the new or revised Constitution. If the new Constitution is approved, the 1973 Legislature may then adopt legislation to conform to it. The "schedule of proposed legislation" is different from the "schedule of transitional provisions" referred to in Sections 20 and 23 (10) of this act.

SCHEDULE OF TRANSITION

Section 14. The convention shall prepare a schedule of transitional provisions and fix the date or dates upon which revisions, alterations or amendments, if adopted by the voters, take effect.

The Convention will fix the date or dates upon which revisions, alterations or amendments adopted by the voters take effect. There will be situations where time will be needed to work out transitional details. Therefore, it is likely that the Convention will provide that part of the convention proposals will not take effect until several years after they have been adopted by the people. The "schedule of transitional provisions" will be a part of the Constitution and will not be subject to amendment or repeal by law. When its provisions expire or become obsolete, it will not be necessary that the schedule be printed as part of the Constitution.

LICENSING OF LOBBYISTS

Section 15. (1) Sections 43-801 to 43-808, R.C.M. 1947, providing for the licensing of legislative lobbyists shall apply to lobbying at the constitutional convention.

(2) Licensed lobbyists shall file with the secretary of state a report on February 1, 1972; February 15, 1972; March 1, 1972; March 15, 1972; April 1, 1972; June 15, 1972. The report, under oath, must include all expenditures made by him relative to promoting or opposing constitutional provisions. On the fifth day a report is delinquent, the secretary of state shall suspend the license of any licensed lobbyist who fails to file a report until such report is filed. The suspension shall be entered on the docket, and the president of the convention notified.

(3) Reports must be filed even though no expenditures may have been made.

ANALYSIS OF ENABLING ACT

(4) Reports need not include:

(a) reasonable internal expenditures such as office expenses, mailing and routine research, and

(b) reasonable expenditures for his personal food, lodging and travel.

(5) Expenditures of twenty-five dollars (\$25) or less may be reported in total amounts rather than in detail.

(6) A lobbyist who terminates his duties shall give the secretary of state, within thirty (30) days after the date of such termination, written notice and shall include a report of his expenditures covering the period of time since his last report. Such reports shall be final.

(7) The secretary of state shall provide forms and shall keep such reports on file for three (3) years. All records are to be open to the public.

(8) Failure to file reports or the filing of incomplete information is a violation of section 43-808, R.C.M. 1947.

The enabling act provides for the registration, licensing and report of expenditures of Convention lobbyists. This section provides that the current statutes regulating and licensing legislative lobbyists shall apply to lobbying at the Constitutional Convention. (These statutes are set forth in Appendix I). Current statutes provide regulations for lobbying during legislative sessions by any person, corporation or association; any board, department, commission or agency of the state, and any county or municipal corporation. In addition, this section provides that lobbyists submit semi-monthly financial reports on all expenditures to promote or oppose constitutional provisions. On the fifth day a report is delinquent, the Secretary of State shall suspend the license of the lobbyist until the report is filed.

COMPENSATION OF CONVENTION DELEGATES

Section 16. (1) For each day of the organization, plenary and signing sessions of the convention, members of the convention shall be paid the same per diem, and expenses as provided in section 43-310, R.C.M. 1947, for members of the legislative assembly.

ANALYSIS OF ENABLING ACT

(2) *The president and vice-president of the convention shall be paid the same per diem, and expenses as the president of the senate and speaker of the house of representatives as provided in section 43-311, R.C.M. 1947.*

(3) *Members and officers shall be entitled to mileage for three (3) trips to and from their residences and Helena by the nearest traveled route at the rate provided for the legislative assembly in section 43-310, R.C.M. 1947.*

(4) *Officers and employees of the state and its political subdivisions who are not prohibited by the Montana Constitution or laws of Montana from serving as delegates and who are elected and serve as delegates to the convention shall have leave, without pay, from their employment during the time the convention is in session, and they shall be entitled to the per diem, expenses and mileage for delegates as provided in this section.*

Article XIX, Section 8 of the Constitution provides in part: "The legislative assembly shall in the act calling the convention...fix the pay of its members and officers, and provide for the payment of same...."

For each day of the session, members and officers of the Convention will be paid the same per diem (\$20 a day) and expenses (\$25 a day) as provided by law for members and officers of the Legislative Assembly. Members and officers will be entitled to mileage for three trips to and from their residences and Helena at the rate provided for the Legislative Assembly (9¢ a mile). Current statutes for legislative per diem, expenses and mileage are set forth in Appendix J.

Officers and employees of the state and its political subdivisions who are not prohibited by the Montana Constitution or state laws from serving as delegates and who are elected and serve as delegates to the Convention will be granted leave without pay from their employment during the time the Convention is in session. They will be entitled to the same per diem, expenses and mileage as other delegates.

RATIFICATION ELECTION

Section 17. (1) The revision or alteration of, or the amendments to the constitution, adopted by the convention, shall be submitted to the electors of this state for ratification or rejection, at an election appointed by the convention for that purpose, not less than two (2) months nor more than six (6) months after the adjournment of the convention.

ANALYSIS OF ENABLING ACT

(2) *The convention may submit proposals to the electorate for ratification in any of the following forms:*

(a) submitted as a unit in the form of a new constitution;

(b) submitted as a unit with the exception of separate proposals to be voted upon individually, or

(c) submitted in the form of a series of separate amendments.

(3) *The proposals adopted by the convention shall be certified by the president and secretary of the convention to the secretary of state.*

(4) *Each proposed revision, alteration, or amendment, together with appropriate information explaining each revision, alteration, or amendment, shall be published in full and disseminated to the electors upon adjournment of the convention but not later than thirty (30) days preceding the election and in such manner as the convention prescribes.*

(5) *The convention shall also publish a report to the people explaining its proposals.*

(6) *Notice of the election shall be given in the manner and form prescribed by the convention.*

(7) *The convention shall prescribe the manner and form of voting at such election.*

(8) *The votes cast at such election shall be tabulated, returned and canvassed in such manner as may be directed by the convention.*

(9) *If a majority of the electors voting at the special election shall vote for the proposals of the convention the governor shall by his proclamation declare the proposals to have been adopted by the people of Montana. The new constitutional provisions shall take effect as provided therein, or as provided in a schedule of transitional provisions attached thereto.*

(10) *The election laws of the state of Montana shall apply in all other respects to the election conducted under this section.*

ANALYSIS OF ENABLING ACT

Article XIX, Section 8 of the Montana Constitution provides in part that the revisions, alterations or amendments proposed by the Convention "...shall be submitted to the electors for their ratification or rejection at an election appointed by the convention for that purpose, not less than two (2) nor more than six (6) months after the adjournment thereof; and unless so submitted and approved by a majority of the electors voting at the election, no such revision, alteration or amendment shall take effect."

The Convention will probably provide for a special ratification election in conjunction with the November 7, 1972 general election. If the Convention chooses this course of action, it must adjourn permanently not earlier than May 7, 1972 nor later than September 7, 1972. The Convention need not meet in continuous session until May 7, 1972, but may recess from time to time between January 17 and May 7, 1972.

A special election on the same day as the general election would minimize additional election expenses and increase voter participation. Since 25 per cent of the voters at general elections commonly do not vote on constitutional questions, Convention proposals placed on the general election ballot almost certainly would not receive the vote of a majority of the persons voting at the election, as is required by the Constitution. This problem can be avoided by conducting a special election on the proposed constitution on the same day as the general election but not as part of the general election.

After the Convention has adjourned, it will be necessary to acquaint the public with the Convention proposals. There should be adequate time for the Convention to inform the electorate about the proposed constitution.

The Convention may submit proposals for ratification in any of the following forms: (1) as a unit in the form of a new constitution, (2) as a unit with the exception of separate proposals to be voted upon individually, or (3) in the form of a series of separate amendments. The manner in which the proposals are submitted should be designed to determine the public will as completely and conveniently as possible. The rejection by the voters of New York, Rhode Island and Maryland of proposed new constitutions presented in a single package supports the conclusion that success is more likely if highly controversial issues are submitted separately. As the Advisory Commission on Intergovernmental Relations pointed out in its annual report for 1968:

ANALYSIS OF ENABLING ACT

Voter reaction may have indicated that the electorate is more favorably disposed when it can say "yes" or "no" to the separate component parts of a new constitution rather than having to accept or reject an entire new basic charter on a "take it or leave it" basis.¹⁰

This view was borne out during 1968, 1969 and 1970 by success in Pennsylvania, Florida, Hawaii and Illinois, where proposals were offered in a series of separate propositions, and by failures of single packages in New Mexico, Oregon, Idaho and Arkansas. Submission in a single package consolidates and strengthens the effect of opposition to particular parts of a proposed document. Permitting highly controversial issues to be voted on individually allows them to be decided on their own merits.

Section 17 of the enabling act also provides for the publication and distribution of the Convention's proposals to the voters. The Convention is authorized to prescribe the manner and form of voting on the proposals, the manner and form of notice of the election and the manner of tabulating, returning and canvassing the votes cast at the election.

If the proposals of the Convention are approved by a majority of the electors voting at the special election, the Governor shall declare them adopted. However, the proposals take effect only as provided in the schedule adopted by the convention.

QUALIFIED ELECTORS

Section 18. Every person who, at the time of holding of the elections provided for in this act, is a qualified voter under the constitution and laws of this state shall be entitled to vote in such election.

This section declares that all qualified voters are entitled to vote in elections conducted under this bill. The ratification by two-thirds of the states of the 26th Amendment to the United States Constitution, has lowered the legal voting age to 18 for all elections.

ANALYSIS OF ENABLING ACT

ELECTION LAWS

Section 19. All state and local officials shall do all those things which are appropriate to the holding of each of the special elections provided for in this act and which are required under the general election laws.

Sections 4 and 17 (10) provide that, except as otherwise provided in this law, each election conducted under the enabling act will be governed by the state election laws. This section requires state and local officials to do all things appropriate to the holding of each of the special elections.

PREPARATORY COMMISSION

Section 20. (1) A temporary state agency known as the Montana constitutional convention commission consisting of sixteen (16) members is hereby created to prepare for the constitutional convention. Legislators whose terms of office have not expired shall not be appointed to the commission. Members of the commission shall be appointed for a term ending upon sine die adjournment of the constitutional convention, consideration being given to geographic, economic, and other pertinent factors as follows:

(a) four (4) members appointed by the speaker of the house of representatives, no more than two (2) of whom shall be affiliated with the same political party;

(b) four (4) members appointed by the committee on committees of the senate, no more than two (2) of whom shall be affiliated with the same political party;

(c) four (4) members appointed by the governor, no more than two (2) of whom shall be affiliated with the same political party;

(d) four (4) members appointed by the supreme court, no more than two (2) of whom shall be affiliated with the same political party.

(2) Commission members shall be reimbursed for actual and necessary expenses incurred as commission members.

ANALYSIS OF ENABLING ACT

(3) *Vacancies in the membership of the commission shall be filled in the same manner as the original appointments, except when the legislature is not in session a vacancy among members appointed by the Speaker of the House and the Committee on Committees of the Senate may be filled by selection of another member by the remaining members of the commission.*

(4) *The commission shall select from its membership a chairman and any other officers it considers necessary.*

(5) *The commission may employ and fix the compensation and duties of necessary staff.*

(6) *State, municipal and county officers and employees, at the request of the commission and with the consent of the employing agency, may be granted leave with or without pay from their agency to serve as consultants to the constitutional convention commission. If leave with pay is granted they shall receive no other compensation, except mileage and per diem, from the commission.*

(7) *It shall be the duty of the commission, in order to prepare for the constitutional convention: to undertake studies and research; to compile, prepare and assemble essential information for the delegates, without any recommendation.*

(8) *The chairman shall schedule meetings of the commission as deemed necessary. The chairman shall give due notice of the time and place of the meetings to members of the commission. The director shall report at each meeting.*

(9) *The commission shall maintain a written record of its proceedings and its finances which shall be open to inspection by any person at the office of the commission during regular office hours.*

(10) *Upon request, state agencies shall cooperate with the commission by furnishing assistance and data to the extent possible.*

(11) *The commission may accept and expend any federal funds which may be available for support of the preparatory study.*

(12) *The commission shall report its findings and any recommendations it considers necessary to the convention and transfer its files to the constitutional convention within ten (10) days after the constitutional convention has convened.*

An important factor in the success of recent constitution writing and revision has been the increased attention to the

ANALYSIS OF ENABLING ACT

technical preparation for and popular participation in the constitution writing process. Nineteen of the last twenty major constitutional conventions have been preceded by preparatory commissions.

Planning for the Convention involves three operations:

1. Comprehensive research to identify and clarify the significant issues, problems and alternative methods of change;
2. Planning a program and preparing materials for informing the public on constitutional issues, and
3. Planning the physical facilities for the Convention.

This section of the enabling act creates a temporary state agency known as the Montana Constitutional Convention Commission, consisting of 16 members, to prepare for the Constitutional Convention. The Governor, Supreme Court, House of Representatives and Senate each appointed four members, no more than two of whom belong to the same political party.¹¹ Legislators could not be appointed. The commission is authorized to undertake research and to prepare and assemble information for the delegates, without recommendation.

Careful advance preparation is indispensable for modern constitution making and revision. Since the 1915 New York Constitutional Convention established the precedent for preparatory research, no modern constitution approved by the voters has been drafted or extensively altered without systematic research and careful preparation. No group of constitution makers can be expected to have the personal knowledge necessary to deal with all the complex issues and problems that will confront them. Research for constitutional conventions has varied widely. Typically it has been of a factual, background nature designed to provide information for basic decision-making action by the conventions.

Preparatory commissions in Hawaii, Michigan, New York, Pennsylvania and Illinois prepared background and comparative studies on particular aspects of the constitutional system, citing the experience of other states and relating the data specifically to the local constitutions. A number of commissions, exemplified by those in Arkansas, Maryland and New Mexico, prepared substantive recommendations in the form of draft constitutions.

ANALYSIS OF ENABLING ACT

Preparatory work played a crucial role in enabling the New Jersey, Missouri, Puerto Rico, Alaska, Hawaii, Pennsylvania and Illinois conventions to write what are generally regarded to be among the best state constitutions. Public information programs were crucial in obtaining voter approval of proposed constitutions in Pennsylvania, Hawaii and Illinois.

The preparatory commission will perform three functions:

1. Conduct research and assemble essential information for the delegates;
2. Conduct a public information program to keep the Montana public informed of every step in the Convention process, and
3. Make arrangements for the convention including site, facilities, reproduction of convention documents and proposed staff needs.

The preparatory commission staff will be available for transfer to the Constitutional Convention to assist delegates during the Convention.

The role of the preparatory commission is completed when the Convention convenes and assumes responsibility for its own operation. Files of the commission are to be transferred to the Convention within ten days after the Convention convenes on November 29, 1971. Any unexpended funds of the commission are transferred to the Convention as of February 1, 1972. Terms of office of the commission members end upon final adjournment of the Convention.

CONVENTION APPROPRIATION

Section 21. (1) The following amount is appropriated from the general fund to the constitutional convention commission:

For the period ending February 1, 1972 \$149,540

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(2) The following amount is appropriated from the federal and private revenue fund to the constitutional convention commission:

For the period ending February 1, 1972 \$146,461

ANALYSIS OF ENABLING ACT

Any amount unexpended from this appropriation on February 1, 1972 is appropriated to the constitutional convention for the biennium ending June 30, 1973.

(3) The following amount is appropriated from the general fund to the constitutional convention:

For the biennium ending June 30, 1973 \$499,281

(4) The following amount is appropriated from the general fund to the secretary of state for the elections relating to the constitutional convention:

For the biennium ending June 30, 1973 \$ 41,000

Article XIX, Section 8 of the Constitution provides in part: "The legislative assembly shall in the act calling the convention...fix the pay of its members, and provide for the payment of same, together with the necessary expenses of the convention." Section 21 of the enabling act appropriates money to support both the preparatory commission and the Constitutional Convention. The federal grant, anticipated by the appropriation of \$146,461 from the federal and private revenue fund to the Constitutional Convention Commission, was never approved by federal authorities so the appropriation never became effective. Money unexpended for preparatory work is re-appropriated to the Constitutional Convention as of February 1, 1972. The appropriation anticipates a Convention of 60 to 80 working days. Following is a summary of the appropriation:

ANALYSIS OF ENABLING ACT

TABLE 2

SUMMARY OF CONSTITUTIONAL CONVENTION APPROPRIATION

Constitutional Convention	
State Funds	\$499,281
Constitutional Convention Commission	
State Funds	\$149,540
Secretary of State for Elections	
State Funds	41,000
<hr/>	
TOTAL	<u>\$689,821</u>

ANALYSIS OF ENABLING ACT

SEVERABILITY CLAUSE

Section 22. If any part of this act shall be declared invalid or unconstitutional, it shall not affect the validity of any other part of this act.

A statute may be found by a court to be unconstitutional or invalid in part. The severability clause shows the Legislative Assembly's intent that if any portion of the enabling act is found invalid, the remaining valid provisions shall continue in force.

IMMEDIATE EFFECTIVE DATE

Section 23. This act is effective on its passage and approval.

This section provided for an immediate effective date for the enabling act so that the Constitutional Convention Commission members could be appointed and begin the preparatory work. The act become effective March 31, 1971.

AUTOMATIC REPEALER

Section 24. This act is repealed effective June 30, 1973.

The enabling act is temporary legislation and will be repealed June 30, 1973. By this date, the Convention will have completed its work and submitted its proposals to the voters for ratification or rejection.

NOTES

CHAPTER I

1. 25 U.S. Statutes at Large 676 (1889).
2. For a discussion of Montana's constitutional history see: Montana, Constitutional Convention 1971-1972, Constitutional Convention Commission, Montana Constitutional History, Montana Constitutional Convention Study No. 5 (Helena, 1971).
3. Total state vote on ratification of the 1889 Constitution at the October 1, 1889 Election:
 - Without Silver Bow County
 - 20,714 votes for the Constitution
 - 1,807 votes against the Constitution
 - With Silver Bow County except Precinct 34
 - 24,676 votes for the Constitution
 - 2,274 votes against the Constitution
4. For a discussion of amendments to the 1889 Constitution see: Montana, Constitutional Convention 1971-1972, Constitutional Convention Commission, Montana Constitutional History, Montana Constitutional Convention Study No. 5 (Helena, 1971).
5. 1969 Laws of Montana, Ch. 65.
6. Montana, Legislative Council, The Montana Constitution, No. 25 (Helena, 1968), p. 92. Members of the Legislative Council Subcommittee on the Montana Constitution included: Senators Jean A. Turnage, Chairman; William A. Groff; John L. McKeon and Representatives James R. Felt; C. R. Fischer; James T. Harrison, Jr.; Lawrence G. Stimatz; and Jerry B. Wallander. The Legislative Council report on the Montana Constitution is republished for the Convention as: Legislative Council Report on the Montana Constitution, Montana Constitutional Convention Occasional Papers, No. 6 (Helena, 1971).
7. 1969 Laws of Montana, Ch. 53. Members of the Montana Constitution Revision Commission included: Senator John K. McDonald, Chairman; Representative James E. Murphy, Vice Chairman; Mr. Gus M. Albert; Mrs. Firman H. Brown, Jr.; Wade J. Dahood; Otto T. Habedank; Senator John Lyon; Senator Harry B. Mitchell; Senator James Moore; James W. Murry; Dr. Richard B. Roeder; Leonard A. Schulz; Kendrick Smith; Representative William J. Speare; Representative Robert D. Watt; Representative Robert S. White. The Montana Constitution Revision Commission prepared a number of reports, articles and memorandums including:

Recommendations for the Constitutional Convention
Enabling Act

Draft of Constitutional Convention Enabling Act

Analysis of Proposed Enabling Act

Montana Constitutional Revision, Cooperative Extension Service, Montana State University (Bozeman, 1970)

"Constitutional Revision: The Montana Opportunity,"
Montana Business Quarterly 8 (1970), pp. 12-21.

1889-1970 The Montana Constitution: Resource or
Burden? A paper prepared for two conferences on the
Montana Constitution held at the University of Montana
May and Eastern Montana College June 20, 1970.

"Our Montana Constitution," a series of six comprehensive articles on the Montana Constitution distributed to the Montana daily and weekly press from September to November, 1970.

Memorandum on Public Information Program

Memorandum on Organizing a Citizen's Committee

Memorandum on Referendum 67 for News Editors

Selected Bibliography on the Montana Constitution

Memorandum on Referendum 67 for High School Teachers
of Civics and Political Science

Statutes Affecting the Submission of Amendments to
the Vote of the People

Constitutional Provisions Proposed by Montana Constitution Revision Commission Subcommittees with Comments

8. The Executive Committee of the Montana Constitutional Convention Committee consisted of James R. Felt, Chairman; Eugene H. Mahoney, Vice Chairman; Senator Jean A. Turnage, Secretary; John McLaughlin; Mrs. Hugo Eck; Mrs. Art Radcliffe; and Harold G. Stearns. The following groups endorsed Referendum 67: Montana Republican Party, Montana Democratic Party, Montana Chamber of Commerce, Montana AFL-CIO, Montana Bar Association, Montana Council of Churches, Montana Farm Bureau Federation, Montana Farmers Union, Montana Grange, Montana Grain Growers Association, Montana Wildlife Federation, Montana Medical Association, Montana Broadcasters Association, Montana Retail Association, Montana Automobile Dealers Association, Montana District Kiwanis International, Montana Junior Chamber of Commerce, Montana County Commissioners Association, Montana League of Cities and Towns, Montana Association of City-County Planning Boards, Montana County Attorneys Association, Montana Public Employees Association, Montana School Boards Association, Montana Education Association, Montana Federation of Teachers, Montana Student Presidents Association, Montana League of Women Voters, Montana Federation of Business and Professional Women's Clubs, Montana Unit American Association of University Women, Montana Citizens for Court Improvement, Montana Citizens Committee on the State Legislature, Great Falls Chamber of Commerce, Helena Chamber of Commerce, Bozeman Chamber of Commerce, Missoula Chamber of Commerce, Billings Chamber of Commerce, Kalispell Chamber of Commerce, Havre Chamber of Commerce and Lewistown Chamber of Commerce.

9. 28 State Reporter 125 (1971).
10. 1971 Laws of Montana, Ch. 296, as amended by 1971 Laws of Montana, Extraordinary Session Ch. 1.

NOTES

CHAPTER II

1. 28 State Reporter 125, 136 (1971).
2. The invalid act was: 1971 Laws of Montana, Extraordinary Session, Ch. 3. The federal district court opinion invalidating the original plan is: J. O. Wold, Jr., et. al. v. Forrest H. Anderson, United States District Court for the District of Montana, Civil No. 939, Opinion. June 11, 1971. The valid apportionment act is found in: 1971 Laws of Montana, II Extraordinary Session, Ch. 8.
3. 28 State Reporter 125, (1971).
4. John E. Bebout and Emil J. Sady, "Staging a State Constitutional Convention," in State Constitutional Revision, ed. W. Brooke Graves (Brattleboro: The Vermont Printing Company, 1960), p. 77.
5. The 1866 Montana Constitutional Convention met in "Crescent Hall" in Helena. The location of this building is unknown. The 1884 Montana Constitutional Convention began its deliberations on the second floor of "Paynter and Comstock's Store" at Main and Broadway and then moved to "Harmonia Hall" at 110 Broadway. The 1889 Montana Constitutional Convention met in the north court room of the Lewis and Clark County Court House.
6. John P. Wheeler, Jr., The Constitutional Convention: A Manual on Its Planning, Organization and Operation (New York: National Municipal League, 1961), p. 8.
7. 1969 Laws of Montana, S. J. R. 15.
8. Montana, Constitutional Convention 1971-1972, Constitutional Convention Commission, Memorandum on Constitutional Convention Rules: Montana (1889); Arkansas (1969); Hawaii (1968); Illinois (1970); Maryland (1967); New Jersey (1947); New Mexico (1969); New York (1967); and Pennsylvania (1967-68), Montana Constitutional Convention Research Memorandums, No. 1 (Helena, 1971). Montana, Constitutional Convention 1971-1972, Constitutional Convention Commission, Constitutional Convention Rules, Organization and Procedures, Montana Constitutional Convention Study No. 7 (Helena, 1971).
9. Montana, Constitutional Convention 1889, Proceedings and Debates of the Constitutional Convention (Helena, 1921).
10. U.S. Advisory Commission on Intergovernmental Relations, Tenth Annual Report, Report M-42 (Washington, D.C., 1969), p. 5.

11. Members of the Montana Constitutional Convention Commission include: Appointed by the Governor: Mrs. Firman H. Brown, Jr.; Dr. Ellis Waldron; William Sternhagen; Arthur C. Hagenston; Appointed by the Supreme Court: Randall Swanberg; Leonard A. Schulz; Bruce R. Toole; R. H. "Ty" Robinson; Appointed by the Speaker of the House of Representatives: Charles L. Harrington; Clyde Hawks; Charles A. Bovey; Gene Phillips; Appointed by the Senate Committee on Committees: Alexander Blewett, Jr.; Jack E. Brenner; Eugene H. Mahoney; and Clyde Rader.

APPENDIX A

FORTY-SECOND LEGISLATIVE ASSEMBLY v. LENNON

28 State Reporter 125, 481 P.2d 330 (1971).

THE FORTY-SECOND LEGISLATIVE
ASSEMBLY of the State of Montana,
and FRANK MURRAY, Secretary of
State of the State of Montana,

Plaintiffs and Relator,

vs.

Submitted: Feb. 5, 1971
Decided: Feb. 19, 1971

JOSEPH L. LENNON, Clerk and
Recorder of Cascade County,
Montana

Defendant and Respondent.

.

CONSTITUTIONAL LAW, Constitutional Convention, Who May Serve
as Delegates, Manner of Election, under what Census Delegates
Apportioned

Original Proceeding: Declaratory Judgment

For Appellants: Robert L. Woodahl, Attorney General
John Northey, Ass't Attorney General
Charles C. Lovell, Ass't Attorney General,
Great Falls

For Respondent: J. Fred Bourdeau, County Attorney, Great
Falls

Mr. Lovell and Mr. Northey argued the case orally for Appel-
lants, Mr. Bourdeau for Respondent.

Opinion by Justice Haswell; Chief Justice James T. Harrison
and Justices John C. Harrison, Daly and Castles concurred.

Declaratory judgment entered declaring public officers may
not serve as delegates to constitutional convention; delegates
must be elected in same manner as members of house of repre-
sentatives and must be apportioned on the basis of the 1970
census applicable to apportionment of house of representatives
to be elected November 7, 1972.

Mr. Justice Haswell delivered the Opinion of the Court.

This is an original proceeding in this Court by the present
State Legislature and Secretary of State seeking a declaratory
judgment determining certain of their legal rights concerning
the calling, election of delegates, and implementation of a
constitutional convention for the State of Montana.

The specific legal issues sought to be determined herein are:

1. May state and local officers serve as delegates to the constitutional convention? Is a delegate to the constitutional convention a "state officer"?
2. Does the phrase "elected in the same manner" in section 8, Article XIX, of the Constitution of the State of Montana refer only to the constitutional provisions for election of representatives or does it also refer to contemporary statutory provisions for "nomination" and "election" of members of the house of representatives? May the Legislative Assembly provide for nonpartisan nomination and election of delegates to the Constitutional convention?
3. If the house of representatives is reapportioned based on the 1970 census, shall the constitutional convention be apportioned on the basis of the house of representatives elected November 3, 1970, or the house of representatives to be elected November 7, 1972?

Plaintiffs and relators in this action are the Forty-Second Legislative Assembly of the State of Montana and Frank Murray, the Secretary of State of the State of Montana. Defendant and respondent is Joseph L. Lennon, Clerk and Recorder of Cascade County, Montana. The latter two persons are public officials with prescribed duties concerning elections.

The background of the present controversy is undisputed. The 1969 Montana State Legislature, pursuant to authority contained in Article XIX, section 8, of the Montana Constitution, enacted Chapter 65, Montana Session Laws of 1969, providing for a referendum election on the question of calling a constitutional convention to revise, alter, or amend the Constitution of Montana. This question was submitted to the electors of this state at the general election held on November 3, 1970, at which time 133,482 electors voted in favor of calling such constitutional convention and 71,643 electors voted against it. It then became the duty of the present legislative assembly to provide for the calling of such constitutional convention under Article XIX, section 8, of the Montana Constitution providing in part:

" . . . if a majority of those voting on the question shall declare in favor of such convention, the legislative assembly shall at its next session provide for the calling thereof."

The next legislative assembly mentioned therein is now in session and constitutionally limited to a session of 60 days. The legislative assembly now has under consideration a proposed constitutional convention enabling act designated House Bill 168

prescribing, among other things, the qualifications and manner of electing delegates to the constitutional convention.

This pending legislation, including permissible amendments thereto, has raised grave and bona fide legal questions concerning the authority and powers of the legislative assembly in enacting the required constitutional convention enabling act. The specific areas of legal controversy are defined and encompassed in the issues submitted to us for determination in this action.

Faced with this dilemma and the necessity of prompt resolution thereof, the legislative assembly enacted Senate Bill 6, now Chapter 3, Montana Session Laws of 1971, approved by the Governor and effective on January 18, 1971. This legislation authorized and directed the attorney general of Montana, on behalf of the legislative assembly and secretary of state, to institute an action in this Court under the Montana Uniform Declaratory Judgments Act, Title 93, Chapter 89, R.C.M. 1947, to determine the legal issues in controversy.

On January 21, 1971, the attorney general petitioned this Court for leave to file a complaint accordingly. The petition was heard by this Court on the same day. Thereafter, on the same day, this Court entered its order granting leave to file such original complaint for declaratory judgment and assumed original jurisdiction of the controversy. Personal service was ordered to be made forthwith on the defendant and respondent clerk and recorder of Cascade County who was required to answer by January 27 with briefs to be filed and oral argument presented at a hearing February 5. Such was duly accomplished.

At the conclusion of the hearing on February 5, this case was submitted to the Court for decision and taken under advisement. The pleadings disclose no factual dispute, presenting only legal issues for determination by this Court.

This opinion constitutes the declaratory judgment of this Court determining the legal issues presented for decision.

At the outset, we will briefly discuss the jurisdiction of this Court to entertain an original proceeding under the Montana Uniform Declaratory Judgments Act in the instant case, before proceeding to determination of the ultimate issues involved in the present controversy.

A declaratory judgment action is a proper proceeding in which to reach and answer the legal issues raised in this proceeding. A court of record in Montana is specifically granted the power "to declare rights, status, and other legal relations" of a party (section 93-8901, R.C.M. 1947) which "are affected by a statute" (section 93-8902, R.C.M. 1947) and in which a

declaratory judgment "will terminate the controversy or remove an uncertainty" (section 93-8905, R.C.M. 1947). This is precisely the situation that exists in the present case. Here we have a presently existing bona fide, justiciable, legal controversy concerning the authority of the legislative assembly under the Constitution and statutes of Montana in enacting mandatory enabling legislation for a constitutional convention. Resolution of the issues presented herein is necessary to eliminate or reduce a multiplicity of future litigation; to prevent interminable delay in the election of delegates, the formation, and the functioning of the constitutional convention; and to eliminate needless expenditure of public funds on procedures that otherwise might subsequently be declared illegal. One of the basic purposes of the Montana Declaratory Judgments Act is to provide a procedure for advance determination of such issues, thereby eliminating these otherwise detrimental results.

Under the circumstances of the present case, an original proceeding for declaratory judgment in the Supreme Court is likewise authorized. Jurisdiction is granted this Court to hear and determine "such other original and remedial writs as may be necessary or proper to the complete exercise of its appellate jurisdiction (Article VIII, § 3, Montana Constitution). A similar provision exists by statute (section 93-214, R.C.M. 1947), and Montana case law is replete with authority sustaining the original jurisdiction of the Supreme Court in declaratory judgment actions in a variety of situations. State ex rel. Schultz-Lindsay v. Board of Equalization, 145 Mont. 380, 403 P.2d 635; Carey, State Treasurer, v. McFatrige, 115 Mont. 278, 142 P.2d 329; Gullickson v. Mitchell, 113 Mont. 359, 126 P.2d 1106; Bottomly v. Meagher County, 114 Mont. 220, 133 P.2d 770. The foregoing cases establish the original jurisdiction of the Supreme Court in a declaratory judgment action where legal questions of an emergency nature are presented and ordinary legal procedures will not afford timely or adequate relief. Such is the situation here. We have an emergency situation in view of the mandatory legislation required of the present session of the legislative assembly, the absence of any factual controversy but only pure legal questions that must ultimately be answered by this Court in any event, and ordinary legal procedures that will not afford timely relief.

Directing our attention to the first issue before us for determination, we find that it contains two questions which we answer as follows:

Any state and local officers who are prohibited by the constitution or laws of Montana from holding more than one office may not serve as delegates to the constitutional convention. A delegate to the constitutional convention is a "state officer" holding a public office of a civil nature.

Constitutional prohibitions against certain officers holding more than one office include state senators and representatives "during the term for which [they] shall have been elected", Article V, section 7, Montana Constitution; the governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction "during [their] term of office", Article VII, section 4, Montana Constitution, and justices of the Supreme court and district judges "while [they] remain in the office to which [they have] been elected or appointed", Article VIII, section 35, Montana Constitution. (Bracketed words pluralized.)

These restrictions prevent such officers from holding any other "public office" or "civil office" of the state, and these two terms are synonymous. State ex rel. Barney v. Hawkins, 79 Mont. 506, 257 P. 411. This Court has heretofore defined the requirements of a "public office" within the meaning of Montana constitutional proscriptions in Barney as follows:

"After an exhaustive examination of the authorities, we hold that five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature; (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred and the duties to be discharged must be defined, directly or impliedly, by the legislature or through legislative authority; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they may be those of an inferior or subordinate office, created or authorized by the legislature and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity and not be only temporary or occasional." 79 Mont. 528.

It is readily apparent that delegates to a constitutional convention possess the requirements listed in (1), (3), and (4) of Barney.

In our view delegates to a constitutional convention also "possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public" satisfying requirement (2) of Barney. Plaintiffs and relators argue that this requirement is not satisfied, drawing a distinction between officers of the executive, legislative and judicial branches of the state government and delegates to a constitutional convention who act as agents of the people

occupying no position in any recognized branch of state government. Our attention has been directed to several cases from other states upholding such distinction under their particular state history and the particular provisions of their state constitutions. These cases are not persuasive as applied to the present controversy in Montana, being distinguishable on the basis of such factors as historical considerations peculiar to such state, legislative precedent, existing rather than proposed legislation, inherent legislative powers to call a constitutional convention, different constitutional provisions, and dissimilar issues presented for decision: State v. Doyle, 138 La. 350, 70 So. 322; Frantz v. Autry, 18 Okla. 561, 91 P. 193, Board of Supervisors of Elections v. Attorney General, 246 Md. 417, 229 A.2d 388; Harvey v. Ridgeway (Ark. 1970), 450 S. W. 2d 281; Wells v. Bain, 75 Pa. 39, 15 Am. Rep. 563; Baker v. Moorhead, 103 Neb. 811, 174 N. W. 430, and Chenault v. Carter, Ky., 332 S. W. 2d 623.

In our view any distinction sought to be drawn in Montana between offices or positions in which the incumbent acts for and exercises powers in behalf of the state government as distinguished from the people is more artificial than real--an illusory distinction without an actual difference. Under the Montana Constitution, there is no distinction between the "sovereign power of government" referred to in Barney and the "sovereign power of the people". All sovereign power emanates from the people. Article III, section 1, of the Montana Constitution, provides:

"All political power is vested in and derived from the people; all government of right originates with the people; is founded upon their will only, and is instituted solely for the good of the whole."

A delegate to the constitutional convention exercises sovereign powers of a legislative character of the highest order. That the final product of such legislative authority is subject to referendum, renders it no less an exercise of sovereign power. The delegation of unlimited power is not essential to the exercise of sovereign power. To draw a distinction between other state officers and delegates to a constitutional convention, both of whom act as agents of the people exercising sovereign powers in their behalf, is to deny our basic concept of government.

The purpose of the Montana constitutional restrictions against certain officers serving as delegates to a constitutional convention is readily apparent. It is to insure independent consideration by the delegates of the provisions of the new constitution, to reduce concentration of political power at the constitutional convention by eliminating as delegates incumbent office holders, and to foreclose the possibility of such officers creating new offices for themselves or increasing the salaries or compensation of their own offices. See Kederick v. Heintzleman, 132 F. Supp. 582, for the expression of similar

principles in prohibiting a state senator from filing for the position of delegate to the Alaskan constitutional convention. These considerations cannot be given effect unless a delegate to the constitutional convention holds a "public office" thereby placing him within the ambit of constitutional prohibitions.

Requirement (5) of Barney that an office must have some permanency and continuity and not be only temporary or occasional in order to constitute a "public office" is satisfied in the case of a delegate to the constitutional convention. This requirement is a relative matter and must be interpreted in the light of the purposes for which the position was created. A delegate to the constitutional convention holds his position for the entire period of time the constitutional convention is in session. His position is permanent and continuous in the sense that it continuously exists until the duties for which it was created have been completed. It is not temporary or occasional in that it is a full time position for the length of time required for completion of the convention's work. While it is true that constitutional conventions are called but seldom, when a particular constitutional convention is called the delegates are elected for that particular constitutional convention alone and the convention possesses permanency and continuity until its purpose is completed; there is nothing temporary or occasional in the work of its delegates while the convention is in session and carrying out its duties. Contemporary experience notwithstanding, a public position need not be conceived and created in perpetuity in order to qualify as a public office.

Proceeding to the second issue for determination herein, we find it likewise encompasses two related questions which we answer in this manner:

The phrase "elected in the same manner" used in Article XIX, section 8, of the Montana Constitution refers both to constitutional and statutory provisions for "nomination" and "election" of members of the house of representatives. The legislative assembly may not now substantially change the election laws for delegates to the constitutional convention and accordingly may not now provide solely for nonpartisan nomination and election of such delegates.

Article XIX, section 8, of the Montana Constitution provides that the number of delegates to the constitutional convention shall be the same as the house of representatives and that the delegates "shall be elected in the same manner, at the same places, and in the same districts" as state representatives. The Constitution contains further general election requirements applicable to all elections. All elections must be "free and open", Article III, section 5; elections "shall be

by ballot", Article IX, section 1; voters must meet certain age, citizenship and residence requirements, Article IX, section 3; and the candidate receiving the highest number of legal votes shall be declared elected, Article IX, section 13.

Statutory election procedures implementing these constitutional election requirements and providing a specific procedure for the election of delegates to the constitutional convention have been enacted and have been in effect at all times pertinent to this controversy. Section 23-3301, R.C.M. 1947, expressly provides that delegates to a constitutional convention are chosen by the same nominating and primary election procedure as are members of the house of representatives. The same section expressly provides for a primary election for delegates to the constitutional convention who will be chosen at the ensuing general election. Section 23-3304, R.C.M. 1947, provides for primary election filing by declaration of any person running for nomination on the ticket of a major political party; and section 23-3318, R.C.M. 1947, provides for filing by nominating petitions by independent candidates and candidates of new or minor political parties. Numerous other statutes exist relating to representative districts and apportionment implementing constitutional requirements.

At issue is whether the phrase requiring that constitutional delegates be "elected in the same manner" as members of the house of representatives appearing in Article XIX, section 8, of the Constitution refers only to constitutional requirements for the election of state representatives, or whether it encompasses both constitutional and statutory requirements for election of state representatives. We hold that the phrase "elected in the same manner" means exactly what it plainly says--that constitutional delegates are required to be elected by the same election procedures applicable to election of members of the house of representatives without limitation as to the source of such election procedures be they constitutional or statutory. Had the framers of the Constitution intended to limit this phrase to constitutional requirements only, they would hardly have used this particular language knowing that the Constitution contained only broad requirements for elections in general without specific constitutional procedures applicable to election of representatives. By their language coupled with the absence of specific constitutional procedures applicable to the election of representatives, the framers of our Constitution must have intended the requirement to apply to statutory election procedures for representatives to be subsequently enacted by the legislature and amended from time to time. We remain unimpressed with the applicability to Montana of three cited cases from other states to the contrary: *Livingston v. Ogilvie*, 43 Ill. 2d 9, 250 N.E. 2d 138; *Baker v. Moorhead*, 103 Neb. 811, 174 N.W. 430; and *In re Opinion of the Justices*, 76 N.H. 586, 79 A. 29. These holdings are understandable under their particular state history and their particular constitutional

provisions, but their applicability to Montana in the light of its history and constitutional provisions is entirely unwarranted.

Continuing to the second question propounded on this issue, the point of our holding is simply that the present legislative assembly cannot substantially change the manner of election of delegates to the constitutional convention from those existing at the time of the constitutional convention referendum election, nor provide for a substantially different manner of electing such delegates from that applicable to election of representatives. The question authorized to be submitted to the voters at the constitutional convention referendum was contained in Chapter 65, Montana Session Laws of 1969-- ". . . whether the legislative assembly at the 1971 session, and in accordance with Article XIX, section 8 of the Montana constitution, shall call a convention to revise, alter, or amend the constitution of Montana." (Emphasis supplied.) This question was submitted to the electors.

We have heretofore held that the requirement of Article XIX, section 8, of the Montana Constitution requiring that delegates to the constitutional convention be elected "in the same manner" as members of the house of representatives comprehends statutory as well as constitutional election laws. The voters at the constitutional referendum election cast their votes on the basis of the then existing election laws for representatives and accordingly, constitutional convention delegates. To now permit these laws to be substantially changed in midstream by this session of the legislative assembly is to permit a retroactive dilution of voting rights and a fundamental abuse of the elective franchise of voters at the constitutional convention referendum election. Article IX, section 9, of the Montana Constitution grants the legislature the power to pass laws "necessary to secure the purity of elections and guard against abuses of the elective franchise." Conversely, by implication, such constitutional provision prohibits the legislature from enacting laws contravening such goals.

At the time of the constitutional convention referendum election, the election laws applicable to nomination and election of members of the house of representatives and constitutional convention delegates provided for partisan filing by candidates of major political parties by declaration, independent filing without party designation by nominating petition, a primary nominating election, and an ensuing general election. The then existing election laws provided for nonpartisan filing, nomination, and election in the case of judicial candidates. Pending House Bill No. 168 provides for nonpartisan filing by nominating petition only and eliminates filing as a candidate of a political party, eliminates any primary election, and sets up a different manner of nomination and

election of delegates to the constitutional convention than those applicable to nomination and election of members of the house of representatives. The legislative assembly can not thus substantially change the then existing election laws applicable to nomination and election of delegates to the constitutional convention.

As heretofore noted, the then existing election laws permitted the filing, nomination and election of "independent" candidates without party designation and these provisions, of course, are applicable to the nomination and election of delegates to the constitutional convention.

The final issue for determination we answer in this manner:

The constitutional convention must be apportioned on the basis of the 1970 census applicable to the apportionment of the house of representatives to be elected November 7, 1972.

Article VI, section 2, of the Montana Constitution provides in pertinent part:

"(1) The senate and house of representatives of the legislative assembly each shall be apportioned on the basis of population.

"(2) The legislative assembly following each census made by the authority of the United States, shall revise and adjust the apportionment for representatives and senators on the basis of such census."

Article III, section 29, of the Montana Constitution states that the provisions of the Constitution are mandatory unless by express words they are declared to be otherwise. The 1970 United States census is now completed. This session of the legislative assembly must reapportion both houses on the basis of the 1970 United States Census in accordance with the foregoing Montana constitutional requirements. Such reapportionment necessarily affects the makeup of districts for the election of state senators and representatives and the number to be elected from each district. In short, it affects the manner of election of representatives. And as Article XIX, section 8, of the Montana Constitution requires that delegates to the constitutional convention be elected in the same number, from the same districts, and "in the same manner" as members of the house of representatives, it necessarily requires that delegates to the constitutional convention be apportioned in like manner. Such reapportionment is required of this session of the legislative assembly which must by law adjourn prior to the contemplated election of delegates to the constitutional convention. Accordingly, such delegates must be apportioned on the basis of the 1970 census applicable to the reapportioned house of representatives to be elected November 7, 1972.

At first glance our holding on this issue may appear to conflict with our holding with reference to nonpartisan nomination and election of delegates to the constitutional convention. On more penetrating analysis however, it is clear that there is no conflict. At the election of November 3, 1970, the electors voted on the basis of existing election laws. At that time the existing election laws then on the statute books provided for reapportionment by the current session of the legislative assembly at this time, which necessarily would be prior to the election of delegates to the constitutional convention. But in the case of nonpartisan nomination and election of delegates to the constitutional convention, there were no existing laws so authorizing or permitting. The distinction appears clear and the holdings harmonious.

An apparent further question that appears, in view of our holding here and as to Issue No. 2, is the time sequence schedule as set up in House Bill No. 168. The legislature proposes to accomplish the election of delegates, the convening of the convention, the completion of the convention's work, and the other matters in time for submission to the people at the general election in 1972 of the revised, altered, or amended constitutional proposals. This, in our view, is permissible and does not constitute a "substantial" change from the "same manner" referred to in Article XIX, section 8. It is noted that Article XIX, section 8, refers to "manner", "place" and "district", but not specifically to time. Additionally, the Constitution contemplates special elections. The immediately foregoing discussion is meant in an advisory way only.

A further observation, albeit unsolicited, is that since the referendum uses the language "revise, alter, or amend the constitution" it must have been contemplated that the work of the convention might be partial or total and that the individual parts might be submitted to the people. Therefore each Article might be separately submitted.

A declaratory judgment is hereby entered in accordance with the foregoing opinion with court costs to be paid by the Forty-second Legislative Assembly, pursuant to Section 5, Senate Bill No. 6; Chapter 3, Montana Session Laws of 1971.

APPENDIX B

ATTORNEY GENERAL'S OPINION ON QUALIFICATIONS OF DELEGATES

34 Opinions of the Attorney General, No. 4 (1971).

1. CONSTITUTION - CONSTITUTIONAL CONVENTION - PUBLIC OFFICERS -
LEGISLATORS - DELEGATES: Who may serve.

HELD: Because members of the legislature are prohibited from holding other public office during the term for which they are elected, they may not serve as delegates to the constitutional convention.

2. CONSTITUTION - CONSTITUTIONAL CONVENTION - PUBLIC OFFICERS -
EXECUTIVE OFFICERS - DELEGATES: Who may serve.

HELD: Because members of the executive branch are prohibited from holding other public office during their term of office, they may not serve as delegates to the constitutional convention.

3. CONSTITUTION - CONSTITUTIONAL CONVENTION - PUBLIC OFFICERS -
JUDGES - DELEGATES: Who may serve.

HELD: Because members of the judiciary are prohibited from holding other public office while they remain in the office for which they are elected or appointed, they may serve as delegates to the constitutional convention if they resign their present position before assuming the duties of delegate to the convention.

4. CONSTITUTION - CONSTITUTIONAL CONVENTION - PUBLIC OFFICERS -
DELEGATES: Who may serve.

HELD: Other public officers may not serve as delegates to the constitutional convention if they are prohibited by the constitution or statutes from holding other public office, either (a) during the term for which they are elected, or (b) during their term of office.

5. CONSTITUTION - CONSTITUTIONAL CONVENTION - PUBLIC OFFICERS -
DELEGATES: Who may serve.

HELD: Because public officers may not serve as legislators (or delegates), they may serve as constitutional delegates only if they resign their previous office before assuming the duties of delegate to the convention.

6. CONSTITUTION - CONSTITUTIONAL CONVENTION COMMISSION -

DELEGATES: Who may serve.

HELD: Members of the constitutional convention commission may not serve as delegates to the constitutional convention.

Honorable Frank Murray
Secretary of State
State Capitol
Helena, Montana 59601

Dear Mr. Murray:

The calling of the constitutional convention by the 42nd legislative assembly has raised certain questions concerning the eligibility of public officers to serve as delegates to the convention. Article XIX, section 8, Constitution of Montana, states in part:

"The qualifications of members [delegates] shall be the same as of members of the senate, and vacancies occurring shall be filled in the manner provided for filling vacancies in the legislative assembly."

The Constitution of Montana further provides, in Article V, section 7:

"No senator or representative shall, during the term for which he shall have been elected, be appointed to any civil office under the state; and no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office."

In 42nd Legislative Assembly v. Lennon, 481 P. 2d 330, the Montana Supreme Court stated at page 333:

"Any state and local officers who are prohibited by the constitution or laws of Montana from holding more than one office may not serve as delegates to the constitutional convention."

The court continued, stating the extent of this prohibition as it applied to certain constitutionally mentioned officers:

"Constitutional prohibitions against certain officers holding more than one office include state senators and representatives 'during the term for which [they] shall have been elected'"

(citing authority); the governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction 'during [their] term of office', (citing authority); and justices of the supreme court and district judges 'while [they] remain in the office to which [they have] been elected or appointed,' (citing authority)."
(Emphasis supplied.)

1. The limitation placed upon the legislative branch is "during the term for which [they] have been elected." Generally the courts, when confronted by a similar constitutional or statutory prohibition, have held that the prohibition extends during the entire period for which the person was elected and is not affected by the incumbent's resignation. See: Rowe v. Tuck, 99 S.E. 303, 5 A.L.R. 113; Baskin v. State ex rel. Short, 107 Okla. 272, 232 Pac. 388, 40 A.L.R. 941; Chenoweth v. Chambers, 33 Cal. App. 104, 164 Pac. 428; Forman v. Bostwick, 123 N.Y. Supp. 1048; State ex rel. Reynolds v. Howell, 70 Wash. 467, 126 Pac. 954. Members of the 42nd legislative assembly, therefore, may not serve as delegates to the constitutional convention.

2. The restriction placed upon certain members of the executive branch of government named in the Lennon case is "during [their] term of office". The Montana Supreme Court in State ex rel. Morgan v. Knight, 76 Mont. 71, 245 Pac. 267, stated at page 76:

"'Term of office' is a phrase used to describe the period of time during which one regularly chosen by election or appointment and inducted into office is entitled to hold the same, perform its functions, and enjoy its privileges and emoluments."

See also: State ex rel. Sandquist v. Rogers, 93 Mont. 355, 18 P. 2d 617. Finally, the court in Bonner v. District Court, 122 Mont. 464, 206 P. 2d 166 in quoting from Corpus Juris, stated at page 471:

"Again in 46 C.J., Officers, sec. 97, pp. 963, 964: 'The phrase "term of office" is one generally used to mean the fixed period of time for which the office may be held, although it is also used to designate the period for which the office is actually held.'"

Since the court in Bonner was dealing with an office where no "term of office" was fixed we must assume that the citation of the exact language of Corpus Juris is merely dictum and the decisions in Morgan and Sandquist stand as the law of Montana. "Term of office" in Montana, then, means a fixed period of time during which the office may be held. Members of the executive

branch of government, named in the decision of the court in Lennon, may not be delegates to the constitutional convention during the fixed period of time for which their office may be held.

3. The judicial branch of government, justices of the supreme court and district court judges, have an altogether different limitation placed upon them. Their limitation is "while [they] remain in the office to which [they have] been elected or appointed." Thus, the only restriction against the judicial branch is a prohibition of holding another public office while they are members of the judiciary. Members of the judicial branch of government may serve as delegates to the constitutional convention if they resign their position in the judiciary before assuming the office of delegate. It is not, however, necessary for members of the judiciary to resign to qualify as a candidate for election as delegate to the constitutional convention.

4. The court in Lennon spoke of specific offices with specific limitations but, in so doing, the court also gave direction as to the limitations placed on other public officers. The restrictions applied by the court in Lennon to the constitutionally mentioned officers of the legislative, executive and judicial branches of government will be applied in the same manner to other public officers having similar constitutional or statutory prohibitions against dual office holding. All public officers who are prohibited from holding other public office either (a) "during the term for which they are elected" or, (b) "during their term of office" are precluded from being delegates to the constitutional convention.

All public officers who are prohibited from holding other public office "while they remain in the office to which they are elected or appointed" are eligible to serve as delegates to the constitutional convention if they resign their previous office before assuming the position of delegate. It is not necessary that those officers who are prohibited from holding another public office while they remain in the office to which they are elected or appointed resign their former office to qualify as a candidate for election to the office of delegate to the constitutional convention.

5. Although many public officers are not specifically prohibited by the constitution or statutes from dual office holding per se, the constitution does provide a prohibition concerning their ability to serve as a legislator. This prohibition in turn affects their ability to serve as a delegate since delegates to the convention must meet the same qualifications as members of the legislature. Article XIX, section 8, supra. This prohibition is found in Article V, section 7, supra, which states in part:

". . . no member of congress, or other person holding an office (except notary public, or in the militia) under the United States or this state, shall be a member of either house during his continuance in office."

This provision is a general restriction as to public officers' ability to serve as legislators (or delegates), and it does not contain the additional restriction applicable to the legislative, executive, and judicial offices mentioned in the Lennon case. Since the right to hold office is a valuable one and this right should not be restricted except by plain expression of law, prohibitions against dual office holding should be construed in favor of eligibility. 42 Am. Jur., Public Officers, sec. 61. With this presumption in mind, most courts have held that the acceptance of a second public office acts as a resignation or forfeiture of the first office. Gibson v. Crowder, 196 Okla. 406, 165 P.2d 628; 42 Am. Jur., Public Officers, sec. 78. The Supreme Court of Montana made reference to this doctrine in dictum in Gullickson v. Mitchell, 113 Mont. 359, 374, 126 P.2d 1106. Although the court decided Gullickson on a different basis there are indications that the court recognized the doctrine and accepted it as pertinent law. Public officers not burdened with added legal infirmities, such as those found in offices enumerated in the Lennon decision, may serve as delegates to the constitutional convention. However, if they are elected and qualified they must resign their present office before assuming the office of delegate.

The restrictions and limitations heretofore enumerated apply only to public officers as defined by the Montana Supreme Court in State ex rel. Barney v. Hawkins, 79 Mont. 506, 528, 257 Pac. 411:

"After an exhaustive examination of the authorities, we hold that five elements are indispensable in any position of public employment, in order to make it a public office of a civil nature: (1) It must be created by the Constitution or by the legislature or created by a municipality or other body through authority conferred by the legislature; (2) it must possess a delegation of a portion of the sovereign power of government, to be exercised for the benefit of the public; (3) the powers conferred and the duties to be discharged must be defined, directly or impliedly; (4) the duties must be performed independently and without control of a superior power, other than the law, unless they may be those of an inferior or subordinate office, created or authorized by the legislature and by it placed under the general control of a superior officer or body; (5) it must have some permanency and continuity and not be only temporary or occasional." 79 Mont. 528.

The court in the Lennon case cited the requirements set forth in Barney and reiterated the fact that all five elements must be present. If any one of the elements is not present then the position will not be a public office.

The constitutional convention may be deprived of the experience of veteran public officials, but I believe the constitution and the decision of the supreme court in Lennon dictate that the constitutional convention be a people's convention. It is not a novel idea that the basic law of a governmental unit should come from the laymen. Our present constitution provides that all power emanates from the people (Art. III, sec. 1, Constitution of Montana) and well it should be that the people themselves, unhindered by potential self-serving motives, should chart the course that we are to follow. In 42nd Legislative Assembly v. Lennon, supra, at page 334, the court states:

"The purpose of the Montana constitutional restrictions against certain officers serving as delegates to a constitutional convention is readily apparent. It is to insure independent consideration by the delegates of the provisions of the new constitution, to reduce the concentration of political power at the constitutional convention by eliminating as delegates incumbent office holders, and to foreclose the possibility of such officers creating new offices for themselves or increasing the salaries or compensation of their own offices. See Kederick v. Heintzleman, 132 F. Supp. 582, for the expression of similar principles in prohibiting a state senator from filing for the position of delegate to the Alaskan constitutional convention."

This opinion is consistent with the reasoning set forth above. Certain public officers are precluded from serving as delegates while others forfeit their current office upon election and qualification as a delegate. Since delegates will hold no other public office during their tenure as delegates, the temptation to enrich the public office for their own sakes will be absent. The delegates will have to meet the challenge of the electorate before assuming any office which he may have assisted in creating or enriching, and the electorate is a sufficient buffer to protect the interests of the people.

6. A final matter must be considered to insure that this convention is a people's convention: May members of the constitutional convention commission serve as delegates to the constitutional convention? It is my opinion that they may not.

Members of the constitutional convention commission are charged with certain duties under Extraordinary Chapter No. 1, Session Laws of 1971, and more particularly in section 20 thereof, which states in part:

"(7) It shall be the duty of the commission, in order to prepare for the constitutional convention: to undertake studies and research; to compile, prepare and assemble essential information for the delegates, without any recommendation."

The basic research and data gathering process will be performed by the commission and in essence the commission can control the flow of information to the convention delegates. The court in Lennon stated:

"The purpose of the Montana constitutional restrictions against certain officers serving as delegates to a constitutional convention is readily apparent. It is to insure independent consideration by the delegates of the provisions of the new constitution..." (Emphasis supplied.) At page 334.

Sound public policy dictates that in order to insure independent consideration of the provisions of the new constitution that those who provide the information for the delegates to the convention should not themselves serve as delegates. In the process of gathering the necessary information for the convention it is possible that commission members may dampen their ability to give independent consideration to the matters before the convention. The ineligibility of commission members to serve as delegates will provide a sufficient buffer between the informational source and deliberating body to insure the independent consideration suggested by the supreme court.

THEREFORE, IT IS MY OPINION that:

1. Members of the legislature are prohibited by the constitution from holding other public office "during the term for which they are elected" and therefore precluded from serving as delegates to the constitutional convention.
2. The governor, lieutenant governor, secretary of state, attorney general, state treasurer, state auditor, and superintendent of public instruction are prohibited by the constitution from holding other public office "during their term of office" and, therefore, are precluded from serving as delegates to the constitutional convention.
3. Justices of the supreme court and district court judges are prohibited by the constitution from holding other public office "while they remain in the office to which they have been elected or appointed" and, therefore, may serve as delegates to the constitutional convention if they resign their present office before assuming the office of delegate. It is not necessary, however, for such officers to resign their present office to qualify as a candidate for the office of delegate.

4. All public officers who are prohibited by the constitution or statutes from holding other public office, either (a) "during the term for which they are elected" or (b) "during their term of office" are precluded from serving as delegates to the constitutional convention.

5. All other public officers, not burdened with legal infirmities similar to those heretofore described, may serve as delegates to the constitutional convention but must resign their present office before assuming the office of delegate. It is not necessary, however, for such officers to resign their present office to qualify as a candidate for the office of delegate.

6. Members of the constitutional convention commission may not serve as delegates to the constitutional convention.

Very truly yours,

ROBERT L. WOODAHL
Attorney General

APPENDIX C

FILING OF DECLARATION OF NOMINATION BY PARTY CANDIDATES

Section 23-3304, R.C.M. 1947. DECLARATION OF NOMINATION-FILING-FEES-PRINTING OF VICTORIOUS WRITE-IN CANDIDATES ON GENERAL ELECTION BALLOT. (1) Each candidate in the primary election, shall send a declaration of nomination to the secretary of state, registrar, or city clerk.

(2) The candidate must sign the declaration and send with it the required filing fee, to be acknowledged by a notary public if by mail, or by the officer of the office at which the filing is made.

(3) The declaration, when filed, is conclusive evidence that the elector is a candidate for nomination by his party.

(4) Nominating declarations are filed:

(a) In the office of secretary of state for congressional offices, state or district offices to be voted for in more than one (1) county, members of the legislative assembly, and judges of the district court;

(b) In the office of the registrar for county and district offices to be voted for in one (1) county only, and for township and precinct offices;

(c) In the office of the city clerk for all city officers.

(5) Filing fees are as follows:

(a) For offices having a salary of one thousand dollars (\$1,000) or less per annum, ten dollars (\$10) except candidates for the legislative assembly or lieutenant governor must pay fifteen dollars (\$15);

(b) For offices having a salary of more than one thousand dollars (\$1,000) per annum, one per cent (1%) of the total annual salary;

(c) For the offices of county commissioner;

(i) in counties of the first class,
forty dollars (\$40),

(ii) in counties of the second class,
thirty-five dollars (\$35),

(iii) in counties of the third class,
thirty dollars (\$30),

(iv) in counties of the fourth class,
twenty-five dollars (\$25),

(v) in counties of other classes,
ten dollars (\$10),

(d) For offices in which compensation is paid in
fees, five dollars (\$5);

(e) For state, county, and precinct committeemen,
delegates to national conventions, and presiden-
tial electors, no fees are required.

(6) A person nominated by having his name written in on the
primary ballot and desiring to accept the nomination shall
not have his name printed on the general election ballot un-
less he:

(a) Files with the secretary of state, registrar,
or city clerk, at least ten (10) days after the
primary a written declaration indicating his
acceptance of the nomination;

(b) Pays the required filing fee,

(c) Received at least five per cent (5%) of the
votes cast for the office at the last preceding
general election.

(7) The declaration for nomination shall be in form and con-
tain information, prescribed by the secretary of state.
Every declaration must be signed by the elector seeking
nomination.

APPENDIX D

ELECTION GUIDE FOR PARTY CANDIDATES
for
DELEGATE TO CONSTITUTIONAL CONVENTION

Source: Memorandum EL51, June, 1971,
Frank Murray, Secretary of State

Number of Delegates to be Elected One hundred (100) delegates to the constitutional convention are to be elected. Attached hereto you will find a list which indicates the districts to be represented.

Qualifications To serve as a delegate you must be twenty-four (24) years of age, a citizen of the United States and resident of the county or district in which you are elected for at least twelve (12) months next preceding your election.

Declaration of Nomination Forms for filing your declaration of nomination for the office of Delegate to Constitutional Convention, will be secured from and filed with the office of the Secretary of State. The filing fee is fifteen dollars (\$15.00). The last day for filing is August 5, 1971 at 5:00 p.m. PETITIONS RECEIVED AFTER THE 5:00 P.M. DEADLINE WILL NOT BE ACCEPTABLE FOR FILING, EVEN IF THEY BEAR A POSTMARK DATED BEFORE THE DEADLINE. THE DECLARATION OF NOMINATION FORMS, ACCOMPANIED BY THE FILING FEE, MUST BE IN THE OFFICE OF THE SECRETARY OF STATE NO LATER THAN 5:00 P.M. ON AUGUST 5, 1971.

Expense Statements Immediately after the primary election of September 14, 1971, you will receive forms for filing your statement of expenses under the Corrupt Practices Act with the Secretary of State. Clubs organized to support your candidacy must also file statements of expense. Further information and a copy of the election laws will be furnished to each candidate filing a declaration of nomination. Candidates must file their statements by September 29, 1971 and clubs by September 24, 1971. Please note that you and your club will be required to file an itemized list of expenditures and contributions. You will find it important to maintain accurate records of your receipts and expenditures from the beginning of your candidacy for both your individual and club expense statements. SINCE ALL STATEMENTS OF EXPENSES ARE FILED UNDER SWORN STATEMENT, NO RECEIPTS ARE REQUIRED TO ACCOMPANY THE STATEMENTS.

Canvass of Votes After the primary election, your vote will be canvassed by the Secretary of State, in the presence of the Governor and the State Treasurer. The result will be certified to the Governor, who will thereupon issue a certificate of nomination to the successful nominees of each party. The names of the nominees, along with those of independent candidates who filed certificates of nomination by August 4, 1971, will be printed on the ballot at the general election of November 2, 1971.

Expense
Statements
(General)

After that election, you will again be required to file statements of expense under the Corrupt Practices Act with the Secretary of State, as will your clubs. Forms will be mailed to you about November 2, 1971. Candidates must file their statements by November 17, 1971 and clubs must file by November 12, 1971. Itemized accounts of expenditures and contributions received must be included in the statements of expense filed after the general election, as well as those filed after the primary. AGAIN, NO RECEIPTS ARE REQUIRED.

State
Canvass

After the general election, your vote will be canvassed by the Board of State Canvassers, consisting of the Attorney General, State Auditor, and State Treasurer. The Secretary of State is secretary of the board. The results of the canvass will be certified to the Governor, who will thereupon issue certificates of election to the successful candidates.

APPENDIX E

FILING OF CERTIFICATES OF NOMINATION BY INDEPENDENTS

Section 23-3318, R.C.M. 1947. CERTIFICATES OF NOMINATION BY INDIVIDUALS OR PARTIES NOT APPEARING ON PRIOR BALLOT-REQUISITES-APPLICABILITY. Except as provided in subsection (6) of this section, nominations for public office by an individual or a political party which did not appear on the ballot in the next preceding election may be made by executing a certificate of nomination.

(1) The certificate must be in writing and contain:

(a) The name of a candidate for the office to be filled;

(b) His residence, his occupation, and his business address.

(2) If a certificate is filed by a political party which did not appear on the ballot in the next preceding election, it must contain the party name and in five (5) words or less the principle which such body represents.

(3) The certificate must be signed by electors residing within the state and district, or political division in which the officer or officers are to be elected. Each elector signing a certificate shall add to his signature his place of residence, and his business address.

(4) The number of signatures must be five per cent (5%) or more of the total vote cast for the successful candidate for the same office at the next preceding election.

(5) The candidates for nomination shall file the certificates ninety (90) days prior to the date of the general election.

(6) A person who desires to run for president or vice-president as an independent candidate, must file a certificate of nomination with the secretary of state. The certificate must have the signatures of electors equal to five per cent (5%) or more of the legal votes cast for governor at the next preceding general election. He must also nominate the required number of electors allowable to Montana and certify the names to be secretary of state.

(7) This section shall not apply to nominations for special elections or to fill vacancies.

APPENDIX F

ELECTION GUIDE FOR INDEPENDENT CANDIDATES
FOR DELEGATE TO CONSTITUTIONAL CONVENTION

Source: Memorandum EL-S6A, June, 1971,
Frank Murray, Secretary of State

Independent Candidates	There is no provision in the Montana election laws for placing so-called independent candidate's names on the primary election ballot. A person desiring to have his name placed on the November 2, 1971 general election ballot as an independent candidate for Delegate to Constitutional Convention does so by presenting a certificate of nomination to the Secretary of State, signed by electors numbering not less than five percent (5%) of the number of votes cast for the successful candidate for the same office at the next preceding election. Since delegates are to be elected in the same manner as members of the House of Representatives, this would be the office used to determine the number of signatures necessary. (A list showing the number of required signatures in each district may be requested from the Secretary of State, if not received with this election guide.)
Certificate of Nomination	The certificate of nomination must be in writing and each page of the petition must contain: <ol style="list-style-type: none"> 1. the name of the candidate and the office sought; 2. his residence; 3. his occupation; 4. his business address.
Form and Content	The registered elector signing the certificate of nomination must reside within the state and the district in which the office is sought and must affix: <ol style="list-style-type: none"> 1. his signature; 2. his place of residence; 3. his business address. <p>Adding the county and precinct number (if known) will expedite the checking of signatures by the County Clerk and Recorders. <u>In order to further expedite checking of signatures, only those from one county should appear on a single page of the petitions.</u></p>
County Clerk and Recorder to Certify Names of Electors	The signatures of electors on the certificates of nomination must be certified as genuine by the county clerk and recorder after checking his voter registration books and cards. With minor adjustments, the form of certification by the county clerk and recorder, prescribed for initiative and referendum petitions should be followed. Sample forms have been sent to each clerk and recorder.
Where Filed	After certification of the signatures by the county clerk and recorder, completed certificates of nomination of candidates for delegate to constitutional

convention must be filed with the Secretary of State, either in person or by mail, accompanied by the filing fee.

Filing
Fee

The filing fee of fifteen dollars (\$15.00) must be paid to the Secretary of State upon filing a certificate of nomination with a sufficient number of signatures, as certified by the county clerk and recorder.

Time for
Filing

Ninety days before general election--August 4, 1971--section 23-331.8, R.C.M. 1947. In this election (because of the late date of the primary election) certificates of nomination of independent candidates must be filed before the primary election.

CERTIFICATES OF NOMINATION, CERTIFIED BY THE COUNTY CLERK AND RECORDERS, MUST BE RECEIVED IN THE OFFICE OF THE SECRETARY OF STATE BY 5:00 P.M., AUGUST 4, 1971, ACCOMPANIED BY THE \$15.00 FILING FEE. NO CERTIFICATES OF NOMINATION RECEIVED AFTER 5:00 P.M., AUGUST 4, 1971, WILL BE ACCEPTED FOR FILING EVEN IF THEY BEAR A POST MARK DATED BEFORE THE DEADLINE. NO CERTIFICATES OF NOMINATION WILL BE ACCEPTED IF NOT CERTIFIED BY THE COUNTY CLERK AND RECORDER OR IF INCORRECTLY CERTIFIED.

Statements
of Expenses

Independent candidates and any clubs formed to support such candidates will be required to file statements of expense after the general election. A copy of the election laws of Montana, containing the Corrupt Practices Act and further information will be furnished to each candidate filing a certificate of nomination.

It is important to maintain accurate records of receipts and expenditures for the entire campaign for both candidate and club expense statements.

APPENDIX G

CERTIFICATE OF NOMINATION FOR
INDEPENDENT CANDIDATES

TO: The Honorable FRANK MURRAY
Secretary of the State of Montana
State Capitol Building
Helena, Montana 59601

We, the undersigned electors of Representative District Number _____, State of Montana, comprised of the counties of _____ and portions of counties of _____, hereby certify that we nominate, in accordance with Section 23-3318, Revised Codes of Montana, 1947,

Name of Candidate _____
(exactly as it is to appear on the ballot)

Residence of Candidate _____
(street number or post office box)

(city, state and zip code)

Occupation of Candidate _____

Business Address of Candidate _____
(street number or post office box)

(city, state and zip code)

as an independent candidate for the office of Delegate to the Constitutional Convention for Representative District Number _____, State of Montana and respectfully request that the name of _____, as set forth above, (insert here the name of candidate) be placed on the ballot in the General Election to be held November 2, 1971, as provided by Law.

<u>Signature</u>	<u>Addresses</u>	<u>County and Precinct #</u>
_____	(Residence: _____ ((Business: _____	_____
_____	(Residence: _____ ((Business: _____	_____
_____	(Residence: _____ ((Business: _____	_____
_____	(Residence: _____ ((Business: _____	_____

APPENDIX H

SIGNATURES NECESSARY FOR CERTIFICATES OF NOMINATION OF
INDEPENDENT CANDIDATES FOR DELEGATE TO
CONSTITUTIONAL CONVENTION

District Number	Counties in District	Basis For Determining Signatures Needed	Number Of Signatures Required
1	Big Horn, Powder River, part of Carter	2,528	126
2	Custer, part of Carter	2,530	117
3	Richland, Dawson, Wibaux, Fallon	4,862	243
4	Sheridan, Roosevelt, Daniels, part of Valley	5,765	288
5	Blaine, Phillips, part of Valley	3,379	169
6	Garfield, Rosebud, McCone, Prairie, Treasure	2,932	146
7	Stillwater, Carbon, part of Sweet Grass	3,476	174
8	part of Yellowstone	12,685	634
9	Meagher, Wheatland, Golden Valley, Musselshell, part of Sweet Grass, part of Yellowstone	2,912	146
10	Fergus, Petroleum	2,849	142
11	Gallatin, Park	7,352	368
12	Broadwater, Jefferson, Lewis & Clark	8,597	430
13	Cascade	10,728	536
14	Hill, Choteau, Judith Basin, Liberty	6,931	347
15	Glacier, Toole, Pondera, Teton	6,779	339
16	Flathead	6,783	339
17	Lake	2,682	134

District Number	Counties in District	Basis For Determining Signatures Needed	Number of Signatures Required
18	Part of Missoula	9,093	455
19	Powell, Deer Lodge, Granite, part of Missoula	6,450	323
20	Silver Bow	9,679	484
21	Madison, Beaverhead	3,502	175
22	Ravalli	2,836	142
23	Mineral, Sanders, Lincoln	5,260	263

Note: The figures were determined by the Secretary of State in accordance with Extraordinary Session II Senate Bill 5, Chapter Ex. 2-6, Session Laws 1971.

Source: Memorandum El 56B, Frank Murray, Secretary of State.

APPENDIX I

LICENSING OF LEGISLATIVE LOBBYISTS

Section 43-801. PURPOSE OF ACT. The purpose of this act is to promote a high standard of ethics in the practice of lobbying, to prevent unfair and unethical lobbying practices and to provide for the licensing of lobbyists and the suspension of [or] revocation of such licenses.

Section 43-802. DEFINITIONS. The following words and phrases shall have the meaning respectively ascribed to them:

(1) Lobbying. The practice of promoting or opposing the introduction or enactment of legislation before the legislature or the members thereof by any person other than a member of the legislature or a public official acting in his official capacity.

(2) Lobbyist. Any person who engages in the practice of lobbying for hire except in the manner authorized by section 43-807. Lobbying for hire shall include activities of any officers, agents, attorneys or employees of any principal who are paid a regular salary or retained by such principal and whose duties include lobbying. When a person is only reimbursed for his personal living and travel expenses, he shall not be considered to be lobbying for hire. Nothing in this section shall be construed to deprive any citizen not lobbying for hire of his constitutional right to communicate with members of the legislature.

(3) Unprofessional conduct. A violation of any of the provisions of this act, or soliciting employment from any principal, or instigating the introduction of legislation for the purpose of obtaining employment in opposition thereto, or attempting to influence the vote of legislators on any measure pending or to be proposed by the promise of support or opposition at any future election, or by any other means than argument on the merits thereof, or by making public any unsubstantiated charges of improper conduct on the part of any other lobbyist or of any legislator, or engaging in practices which reflect discredit on the practice of lobbying or the legislature.

(4) Principal. (a) Any person, corporation or association which engages a lobbyist or other person in connection with any legislation, pending before the legislature or to be proposed, affecting the pecuniary interest of such person, corporation or association.

(b) Any board, department, commission or other agency of the state, or any county or municipal corporation, which engages a lobbyist or other person in connection with any legislation pending or to be proposed affecting the statutory powers, duties or appropriation of such agency, county or municipal corporation.

(5) Docket. The registrar of licensed lobbyists maintained by the secretary of state pursuant to section 43-805.

(6) Pecuniary interest. This term includes without limitation any legislation which creates, alters or repeals any statutory charge by way of tax, license fee, registration fee or otherwise, or which creates, alters or repeals any statutory privilege, power, restriction or obligation of any principal, or which creates, alters or repeals the powers or duties of any court or governmental agency before which the principal does business.

43-803. LICENSING OF LOBBYISTS-FEE-EXPIRATION, SUSPENSION OR REVOCATION-REINSTATEMENT. (1) Licenses--fees--eligibility. Any person of adult age and good moral character who is a citizen of the United States and otherwise qualified under this act may be licensed as a lobbyist as herein provided. The secretary of state shall provide for the form of application for license. Such application may be obtained in the office of the secretary of state and filed therein. Upon approval of such application and payment of the license fee of ten dollars (\$10.00) to the secretary of state, a license shall be issued which shall entitle the licensee to practice lobbying on behalf of any one or more principals. Each license shall expire on December 31 of each odd-numbered year. No application shall be disapproved without affording the applicant a hearing which shall be held and decision entered within ten (10) days, of the date of filing of the application. The license fees collected by the secretary of state under this act shall be deposited by him in the state treasury in a special fund to be known as the "Lobby License Fund" which fund is to be expended in the manner hereinafter provided.

(2) Suspension or revocation of license. Upon verified complaint in writing to the attorney general of the state of Montana charging the holder of a license with having been guilty of unprofessional conduct or with having procured his license by fraud or perjury or through error, the attorney general is hereby authorized to bring civil action in the district court for Lewis and Clark county, state of Montana, against the holder and in the name of the state as plaintiff to revoke the license. Hearing shall be held by the court unless the defendant-licensee demands

a jury trial. The trial shall be held as soon as possible and at least twenty (20) days after the filing of the charges and shall take precedence over all other matters pending before the court. If the court finds for the plaintiff judgment shall be rendered revoking the license, and the clerk of the court shall file a certified copy of the judgment with the secretary of state. Costs shall be paid from the "Lobby License Fund." The licensing authority may commence any such action on his own motion.

(3) Suspension of lobbying privileges. No lobbyist whose license has been suspended or revoked and no person who has been convicted of a violation of any provision of this act shall engage in any lobbying until he has been reinstated to the practice of lobbying and duly licensed.

Section 43-804. PRINCIPAL OF LOBBYISTS-ENTERING NAME OF LOBBYISTS ON DOCKET. Except as provided in section 43-807 every principal who employs any lobbyist shall within one (1) week after such employment cause the name of said lobbyist to be entered upon the docket. It shall also be the duty of the lobbyist to enter his name upon the docket. Upon the termination of such employment such fact may be entered opposite the name of the lobbyist either by the lobbyist or the principal.

Section 43-805. DOCKET-CONTENTS-REPORT TO LEGISLATURE-SUBJECTS OF LEGISLATION-WRITTEN AUTHORIZATION. (1) The secretary of state shall prepare and keep a docket in which shall be entered the name and business address of each lobbyist and the name and business address of his principal, and the subject or subjects of legislation to which the employment relates or a statement that the employment relates to all matters in which the principal has an interest. Such docket shall be a public record and open to the inspection of any citizen upon demand at any time during the regular business hours of the office of the secretary of state. Beginning with the first week following the beginning of any regular or special session of the legislature and on every Tuesday thereafter for the duration of such session, the secretary of state shall from his records report to each house of the legislature the names of lobbyists registered under this act, not previously reported, the names of the persons whom they represent as such lobbyist, and subject of legislation in which they are interested.

(2) Any principal employing any lobbyist shall when further subjects of legislation are introduced or arise which such lobbyist is to promote to oppose, make or cause to be made additional entries in the docket stating such employment so that the docket will show at all times all subjects of legislation in relation to which the lobbyist is employed or the general statement provided above.

(3) Within ten (10) days after his registration in the docket, a lobbyist shall file with the secretary of the state a written authorization to act as such signed by his principal.

Section 43-806 PRACTICE WITHOUT LICENSE AND REGISTRATION PROHIBITED-COPIES OF STATEMENTS, BRIEFS, ETC.-RESTRICTIONS APPLICABLE WHEN. (1) No person shall practice as a lobbyist unless he has been duly licensed under the provisions of section 43-803 and unless his name appears upon the docket as employed in respect to such matters as he shall be promoting or opposing. No principal shall directly or indirectly authorize or permit any lobbyist employed by him to practice lobbying in respect to any legislation affecting the pecuniary interest of such principal until such lobbyist is duly licensed and the name of such lobbyist is duly entered on the docket. No person shall be employed as a lobbyist for a compensation dependent in any manner upon the passage or defeat of any proposed or pending legislation or upon any other contingency connected with the action of the legislature or of either branch thereof or of any committee thereof.

(2) Before or within five (5) days after delivering any written or printed statement, argument or brief to the entire membership of either or both houses of the legislature, three (3) copies shall be deposited with the secretary of the state.

(3) The restrictions upon the practice of lobbying provided by this act shall be effective only during the regular and special sessions of the legislature.

43-807. PERSONS NOT REQUIRED TO BE LICENSED OR REGISTERED. Any person who limits his lobbying solely to appearances before legislative committees of either house and registers his appearance on the records of such committee in writing, shall not be required to be licensed as a lobbyist, pay a license fee, or register with the secretary of state.

43-808. PENALTY FOR VIOLATIONS. Any person violating the provisions of this act shall be deemed guilty of a misdemeanor and upon conviction thereof, shall be punished by imprisonment in the county jail, not more than six (6) months, or by a fine not exceeding two hundred dollars (\$200) or both.

APPENDIX J

PER DIEM AND EXPENSES OF LEGISLATORS

Section 43-310, R.C.M. 1947. PER DIEM, MILEAGE AND EXPENSES OF MEMBERS. (1) Holdover members of the legislative assembly and members hereafter elected shall receive twenty dollars (\$20.00) per day, payable weekly, during the session of the legislative assembly, and nine cents (9¢) per mile for each mile of travel to and from their residences and the place of holding the session, by the nearest traveled route.

(2) Members shall also receive twenty-five dollars (\$25.00) per day, payable weekly during the session of the legislative assembly, as reimbursement for expenses incurred in attending the session.

(3) The majority and minority parties in each house shall hold pre-session caucuses for the purpose of preliminary organization of the respective houses. Holdover senators, senators-elect, and representatives-elect shall receive mileage at the rate of nine cents (9¢) per mile for each mile of travel to and from their residences and the place or places of holding the pre-session caucuses.

Section 43-311, R.C.M. 1947. PER DIEM AND MILEAGE OF PRESIDENT OF SENATE AND SPEAKER OF HOUSE. The president of the senate, and the speaker of the house, shall receive the sum of twenty-five dollars (\$25.00) per day during the session of the legislative assembly, and the same mileage as members.

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